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DIVISION OF REVIEW

LEGAL ASPECTS OF LABOR PROBLEMS — MINIMUM WAGES

By
Melvin Sims

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February, 1936

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

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F O R E W O R D

This report on "Legal Aspects of Labor Problems--Minimum Wages" was prepared by Mr. Melvin Sims.

The basic legal question of power to regulate in the field of minimum wages reaches far beyond the National Industrial Recovery Act. It involves the question extent to which there is such power in either Federal or State Governments. This study explores the limitations upon the power of these governments.

The original plan was to combine into a single volume this analysis in the field of minimum wages with similar studies on maximum hours, child labor, and collective bargaining. Limitations of time and curtailment of personnel have necessitated the issuance of these analyses in separate documents instead of in one volume as originally planned.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall
Director, Division of Review

February 27, 1936

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MINIMUM WAGES

Looking back at the minimum wage laws in effect in the years preceding the National Industrial Recovery Act, it is striking to observe their restricted scope. Of the two fields covered by these laws, regulation has been less extensive in the field of Private Industry, comprising all enterprise for profit, than in that of Public Works, comprising improvements of public property by or on behalf of the State, such as, the construction, repair, and maintenance of buildings, roads and sewers.

Public Works wage laws exist in only thirty-one of the states, territories and possessions (*). With minor exceptions, (**) the mini-

(*) Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Montana, Minnesota, New Jersey, New York, Nevada, Ohio, Oregon, Pennsylvania, Puerto Rico, Texas, Utah, Vermont, Washington, West Virginia and Wisconsin.

(**) Hawaii has enacted a flat minimum rate of $2.50 per day. (Rev. Laws of Hawaii, 1935, Sec. 92)
The Indiana statute provides that the wage shall not be less than that paid by the State Highway Commission for common labor on its highways. (Sp. Session of 1932, Ch. 60)
Kentucky provides for prevailing wages which shall not be less than one dollar nor more than three dollars per day, with a top of five dollars for skilled labor, foremen, and assistant engineers. (Stats., Carroll's 1930, Sec. 4329)
Nevada provides a minimum of four dollars for an 8-hour day or fifty cents per hour for unskilled labor. (Acts of 1933, Ch. 40, Sec. 1)
Puerto Rico provides not less than one dollar minimum for laborers, workmen, or mechanics. (Acts of 1923, Act No. 11, Sec. 1, as amended 1925, Act. No. 54)
Texas provides thirty cents an hour minimum for manual labor on highways. (Acts of 1931, Ch. 46, Sec. 1)
The Vermont Highway Board fixes minimum wages "subject to local conditions.". (Public Laws 1933, Sec. 4690)
For more detailed information, refer to the Wage Standard Section of the appendix of this report and refer to the state under inquiry.

mum wage enacted is the wage current or prevailing in the community where the work is performed. Even in these, however, the laws, except those of Oregon (*) are not applicable to all kinds of public works and to all employees engaged on such works, although in three states they apply to the preparation of materials prior to their use in public works (**). In 11 states, Hawaii and Puerto Rico, the laws are broadly applicable to all kinds of public works (***) but those of Oregon alone apply to all employees as well (****). Of the remaining 18, the laws in only one state, Texas, are applicable to maintenance work - then solely on highways (*****). The laws of three states are rendered inapplicable by express reference (******). In but eight of these states are the laws applicable to alterations, improvements and repairs (*******), the laws being restricted to construction work in

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(*) Acts of 1933, Ch. 357, Sec. 24, Sub.

(**) Delaware (Revised Code 1935, 2161, Sec. 46)
New Jersey (Cumulative Supplement 1911-24, Section 107-70d, as amended 1933, Ch. 230)
New York (Cahill's Consolidated Laws 1930, Ch. 32, Sec. 220, as amended 1933, Chapters 732-733; 1934, Ch. 347)

(***) Delaware (supra)
Hawaii (Rev. Laws of Hawaii, 1935, Sec. 92)
Idaho (Idaho Code, 1932, Secs. 43-701)
Kansas (Rev. Stats. 1923, Secs. 44-201, as amended 1931, Ch. 214)
Maryland (Public Local Laws 1930, Art. 1a, Ch. 54, Secs. 102-102A, 102B, 102C, as amended, Special Session 1933)
Minnesota (Supplement 1934, Secs. 1664-43)
Montana (Acts 1931, Ch. 102, Sec. 1)
New Jersey (supra)
New Mexico (Acts of 1933, Ch. 145, Sec. 1)
New York (supra)
Oregon (supra)
Puerto Rico (Acts of 1933, Act. No. 11, Sec. 1, as amended 1935, Act No. 54)
West Virginia (Acts of 1933, Ch. 57, Secs. 1 and 2)

(****) Oregon (Acts of 1933, supra)

(*****) Texas, Acts of 1931, Ch. 46, Sec. 1

(******) California (California General Laws, 1931, Act 6429, Sec. 1)
Texas (Acts of 1933, Ch. 45, Sec. 1) Note: There is some doubt as to the extent to which Chapter 45 supersedes 46.
Utah (Acts of 1933, Ch. 39)

(*******) Arizona (Acts of 1933, Ch. 72, Sec. 4)
Colorado (Acts of 1933, Ch. 124, Sec. 1)
Connecticut (Cumulative Supplement to the General Statutes, 1931-33, Sec. 31B) applies to public buildings only

(Footnote continued on following page)

five states and Alaska (*) and to particular political subdivisions in three states (**). Four states restrict the application of these laws to works above certain cost figures (***), and seven states restrict their application to certain types of projects (****). The laws of but three states and Alaska apply to all employees (*****). Application of the law is restricted to free laborers and free mechanics in Florida, to common labor in Indiana, to manual or day labor in Kentucky and to manual labor on highways in Texas. Nevada's laws are restricted to unskilled labor, Maine's to laborers and Wisconsin's highway laws to laborers. The laws of the remaining states apply in most cases to laborers, workmen, and mechanics.

(******) Florida (Act of 1935, Ch. 16300, Sec. 1)
Cont'd Ohio (General Code of Ohio, 1932, Sec. 17-3 to 17-6, inclusive)
Wisconsin (Stats. 1931, Sec. 103.49 and 103.50) applies to public buildings and highways only
New Jersey (Act of 1931, Ch. 242, Sec. 1) applies to public buildings only
Vermont (Public Laws, 1933, Sec. 4690) applies to highway work and bridges only

(*) California (supra)
Indiana (Special Session of 1932, Ch. 60)
Maine (Act of 1933, Ch. 238)
Nevada (Acts of 1933, Ch. 40, Sec. 1)
Texas (Acts of 1933, Ch. 45, Sec. 1) exclusive of state highways

(**) Pennsylvania (Penna. Stats. 1920, Sec. 5416) School districts
Washington (Acts of 1931, Ch. 1, Sec. 8) Public utility districts
Maryland (supra) City of Cumberland. There are, however, additional counties in Maryland which enacted public works wage laws.

(***) Arizona (supra) works costing more than $1,000.
Colorado (supra) works costing more than $5,000.
Florida (supra) works costing more than $5,000.
New Jersey (Acts of 1931, Ch. 242, Sec. 1) works costing more than $5,000.

(****) Florida (supra) Public buildings
New Jersey (Acts of 1931, Ch. 242, Sec. 1) Public buildings
Indiana (supra) highways and bridges
Kentucky (supra) Public roads
Texas (Acts of 1931, Ch. 46, Sec. 1) State highways
Vermont (supra) highway work and bridges
Wisconsin (supra) public buildings and highways.

(*****) Alaska (supra)
New Mexico (supra)
Ohio (supra)
West Virginia (supra)

While the state has the power, if not restricted by constitutional limitations, to fix the wages of its employees engaged on public works under its power to make contracts (*), the courts have strictly construed the state constitutions, holding several enactments unconstitutional (**). It has been held that states have the power to delegate the fixing of wages of employees on public works to municipalities. But where the municipal charter is not broad enough to exercise this function, or where the state power or the constitution is infringed thereby, the courts have held such enactments void (***).

The cases show a trend toward the upholding of public works wage laws, with the caveat that they must be carefully drafted to provide definiteness and certainty.

(*) 50 A.L.R. 1483
Atkin v. Kansas (1903) 191 U. S. 207, 48 L. ed. 148, 24 Sup. Ct. Rep. 124.
(Power of state to fix hours)
Campbell v. New York City (1927) 244 N. Y. 317, 155 N. E. 628.
Williams Engineering and Contracting Co. v. Metz (1903) 193 N. Y. 148, 34 L.R.A. (NS) 201, 85 N.E. 1070
Jahn v. Seattle (1922) 120 Wash. 403, 207 Pac. 367.
Byars v. State (1909) 2 Okla. Crime Rep. 481, 102 Pac. 804, Ann. Cas. 1912A, 765.
Norris v. Lawton (1915) 47 Okla. 315, 148 Pac. 122
Willis v. United States (1907) 206 U. S. 246, 57 L. ed. 1047, 27 Sup. Ct. Rep. 600.
State v. Tibbetts (1920) 21 Okla. Crime Rep. 168, 205 Pac. 776.

(**) Gies v. Broad (1906) 41 Wash. 448, 83 Pac. 1025
Wagner v. Milwaukee (1923) 180 Wis. 640, 192 N.W. 994
Miller v. Niven (1923) 180 Wis. 563, 194 N.W. 30
Schmitt & Sons v. Milwaukee (1924) 185 Wisc. 119, 200 N.W. 678
Malette v. Spokane (1913) 77 Wash. 205, 137 Pac. 496
State v. McNally (1896) 48 La. Ann. 1450, 21 So. 27
St. Louis Quarry and Const. Co. v. Frost (1901) 90 Mo. App. 677
Wright v. Hoctor (1914) 95 Nebr. 345, 145 N.W. 704
Gamma Alpha Bldg. Asso. v. Eugene (1919) 9402 80, 184 Pac. 973.
Re Broad (1904) 36 Wash. 449, 78 Pac. 1004
Milwaukee v. Ranlf (1916) 164 Wis. 172, 159 N.W. 819

(***) Ex parte Kuback (1890) 85 Cal. 274, 24 Pac. 737
(Violated freedom of contract)
Fiske v. People (1900) 188 Ill. 206, 58 N.E. 985

(Footnote continued on following page)

The Connally case (*) demonstrates the inherent danger of invalidation run by penal statutes as broad in their terms as the "prevailing wage" laws, thereby indicating, at least, the inadvisability of including criminal penalties in such laws.

While the procedural steps taken in the Connally case weaken its force as authority, the Supreme Court of the United States, in that case, held the Oklahoma Statute of 1921 (**) repugnant to the due process clause of the Fourteenth Amendment in that the mandate to pay "current rate of per diem wages" in the "locality" where the work was performed was too indefinite. This was a criminal statute and therefore was strictly construed. In the Campbell case (***) Chief Justice Cardozo, in distinguishing the Connally case and upholding the New York statute said:

"The plaintiffs would have us hold that from the throes of this long struggle there emerged a statute without meaning, a futile and deceptive gesture. Connally v. General Constr. Co., 269 U.S. 385, 70 L ed. 322, 46 Sup. Ct. Rep. 126, decided by the Supreme Court of the United States in January, 1926, is said to point to that conclusion. An injunction was there sought to restrain the law offices of Oklahoma from the enforcement of a penal statute. The wages paid by the employer were $3.20 per day. The commissioner of labor complained that $3.60 should be accepted as the 'current rate.' His own investigation showed, however, that wages varied in the locality from $3 at one extreme to $4.05 at the other. These were conceded facts, for the case was heard upon demurrer to the bill. In such circumstances the decision was merely this, that in its application to that employer, the statute, which is very similar to our own, was too obscure and indefinite to sustain a charge of crime. Obscurity was thought to be inherent also in the 'locality' of the work. There was thus, in the view of the court, 'a double uncertainty,' fatal to the validity of 'a criminal statute.'"

(***) (Violated freedom of contract)
Cont'd McChesney v. People (1902) 200 Ill. 146, 65 N.E. 626
(Violated freedom of contract)
Clover v. People (1903) 201 Ill. 545, 66 S.E. 820
(Violated freedom of contract)
Harlan v. Employers Assn. (1932) 159 Atl. 267
(Charter gave no power)
Atty. Gen. ex rel Lennane v. Detroit (1923) 225 Mich. 631, 196 N. W. 391
(Infringed state power)
State ex rel Bramley v. Norton (1897) 50 Mo. App. 183
(Violated freedom of contract)
Frame v. Felix (1895) 167 Pa. 47, 31 Atl. 375
(Charter gave no power)
Bohn v. Salt Lake City (1932) 8 Pac. (2d) 691
(Charter gave no power)

(*) Connally v. General Construction Co. (1925) 269 U.S. 385
(**) Compiled Oklahoma Statutes, 1921, pp. 7255, 7257
(***) Campbell v. New York City (1927) 244 N.Y. 317, 155 N.E. 628

The court then pointed out that the law of New York was not a criminal law but merely provided for the insertion in contracts, between the State or its civil divisions and contractors, the promise that "prevailing wages" would be paid.

After further discussion, the court said:

"We do not now determine whether Connally v. General Constr. Co. supra, stands in the way of criminal prosecution. Distinctions of place and circumstances may conceivably exist. If so, the time to draw them is not now. We put aside for the same reason the determination of the bounds of civil liability. Criteria of conduct, too indefinite and elastic to expose to punishment for crime, may yet be fixed and definite in such degree that they are not to be disregarded as wholly unintelligible when the question is one of the violation of a promise. This is not the time to attempt a definition of 'the prevailing rate of wages' with its background of legislative history and twenty years or more of practical construction. One finds it hard to believe that a cliche so inveterate is devoid of meaning altogether."

The broad terms of the public works wage laws have thrown myriad problems into the laps of the courts. They have been engaged over a long period of years in rewriting these laws by judicial inclusion and exclusion. Questions such as who is an employer, who is an employee, and what evidence may be admitted in determining prevailing wages, have been recently before the courts. But this is necessarily a slow process. The maximum effectiveness of these laws will be approached more speedily if the legislatures will exercise more care and forethought in their drafting.

Minimum wage laws covering employees in private industry have been enacted by some states for women and children - but not for men. Twenty-one states, the District of Columbia, and Puerto Rico have enacted this type of legislation (*).

(*) Arkansas, Law of 1915, Act 191
Arizona, Ch. 3 of Session Laws of 1923
California, Deerings General Laws, 1931, Title 270; Act 3613
Colorado, Compiled Laws, 1921, Secs. 4262-4283, 4329
Connecticut, Cumulative Supplement to the General Statutes: 1931, 1933, Ch. 131a, Secs. 630b-633b.
District of Columbia, 40 Stat. at L. 960 C. 174 Com. Stat., Section 3421-1/2A, Federal Stat. Anno. Supra. 1919, p. 234
Illinois, Cahill's General Revised Statutes 1933, Chap. 48, 338-358; made permanent by Senate 119, approved July 1, 1935
Kansas, Session Laws, 1915, Ch. 275, pp. 352-358; amended,
Session Laws 1921, Ch. 263, pp. 417-419
(Footnote continued on following page)

Massachusetts, General Laws 1921, Chap. 23, Secs. 1, 2, and 7, Chap. 151. Replaced by "Standard" Minimum Wage Act, Session Laws 1933, Ch. 308; 1935, Ch. 267.
Minnesota, General Statutes, 1927, Secs. 4033-4034, 4210-4232.
Nebraska, Session Laws 1913, Ch.211, pp. 638-642.
New Hampshire, Acts of 1933, Ch. 152.
New Jersey, Session Laws 1933, Ch. 152.
New York, Cahill's Consolidated Laws of New York, 1933, Supplement, Chap. 32, Labor Law, Article 19.
North Dakota, Session Laws, 1919 (Ch. 174, pp. 317-322; Supp. to Compiled Laws 1913-1925, Secs. 396a4, 396b1-396b18).
Ohio, Session Laws 1933, pp. 502-510.
Oregon, Session Laws of 1913, Ch. 62, pp. 92-99.
South Dakota, Secretary of Agriculture. Compiled Laws, 1929, Sec. 1022-A-1022E; Session Laws, 1931, Chs. 173 and 174.
Texas, Gen. Laws, 1919, Reg. Sess., Ch. 160, pp. 305-309.
Utah, Session Laws, 1933, Ch. 38.
Washington, Session Laws of 1913, Ch. 174, pp. 602-608.
Wisconsin, Statutes 1931, Secs. 20.57, 101.02, 104.01-104.12.
Puerto Rico, Session Laws, 1919, No. 45, p.200.

The laws of Nebraska and Texas were repealed in 1919 and 1921 respectively (*). The laws of Colorado, New Jersey, and Utah are inoperative through lack of appropriation. The laws of Arizona, Puerto Rico, Kansas, Arkansas and the District of Columbia have been held unconstitutional. The Law of Minnesota has been declared Unconstitutional in its coverage of women. In South Dakota the law covers only women and girls. In five states (excluding those rendered inoperative by lack of appropriation) the law enacted is broad enough to cover all occupations (**). In Wisconsin alone has the law been put into practical operation so as to include domestic workers. In all cases these laws provide that the actual designation of industries and rates shall be done by an administrative body known variously as an industrial commission or a comission of labor. In actual practice the wage rates have been set for very few occupations.

Two kinds of minimum wage laws have been enacted. The Massachusetts law of 1921 depended upon public opinion, providing for investigation of wages paid, determination of a fair wage after a public hearing, and publication in four newspapers in each county of the wage fixed, the findings on which it is based, and the names of employers who fail or refuse to accept such minimum wage. The laws enacted by the rest of the states provided penalties other than moral suasion. In 1934 Massachusetts replaced the publicity law by one with penalties (***). In general (****), a commission was appointed to investigate wages paid and the cost of living on a standard protective of the health, safety, and morals and to fix a wage on the cost of living basis. Any employer paying a wage less than that fixed by the commission would be subject to the penalties of the act.

The course of the decisions of cases brought under these laws is a history as illogical to the legal scholar as to the layman. Upheld as constitutional for almost ten years, this type of legislation was ultimatily held violative of the Fourteenth Amendment of the Federal Constitution. The first test of minimum wage legislation came in 1914. The State of Oregon had passed a law in 1913 providing that an Industrial Welfare Commission investigate and determine the costs of living on a standard which would preserve the health of women and minors, and fix minimum wages based on those costs of living. The commission fixed a minimum wage of $8.64 per week for women working in factories in the City of Portland. Frank Stettler brought suit against Edwin O'Hara and others constituting the Industrial Welfare Commission seeking to vacate and annul the order and enjoin its enforcement. A demurrer was filed to this complaint. The issue presented to the Court was whether the minimum wage law was within the police power of the State or whether it violated the Fourteenth Amendment or Article 1, Section 20, of the Oregon constitution. The lower and appellate courts sustained the demurrer,

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(*) Nebraska, Law repealed in 1919 through omission of Ch. 211 from the Civil Administrative Code.
Texas, General Laws, 1921, regular session, Ch. 118, p.225.

(**) California, Minnesota, Oregon, Washington, and Wisconsin

(***) Session Laws 1933, Ch. 308; 1935, Ch. 267.

(****) See, however, Arizona, Arkansas and South Dakota in which states the wages are fixed in the law.

upholding the law. The Supreme Court of the State affirmed this position in 1914 (*).

Mr. Justice Eakin in rendering the Stettler opinion held: "We think we should be bound by the judgment of the Legislature that there is a necessity for this act, that it is within the police power of the state to provide for the protection of the health, morals and welfare of women and children, and that the law should be upheld as constitutional." (**)

The Court stated that the inhibition of the Fourteenth Amendment would bar this legislation only if the enactment were without the police power of the state and that if the law were within the police power of the State, the law would be constitutional notwithstanding an apparent conflict with the Fourteenth Amendment. (***)

On the police power question, the Court quoted with approval extensively from those passages from Muller v. Oregon (****) having reference to the disadvantages suffered by women in employment due to physical structure - especially when the burdens of motherhood were upon them, and discussing their physical inferiority and dependency on men. The Court quoted with approval that portion of the report of the Commission on Minimum Wage Boards of Massachusetts which related the underpayment of women to their health and to public charity; and from Elizabeth Beardsley Butler's "Women in the Trades", quoting, on Page 748 of the decision:

> "* * * where girls do not have families to fall back on, some go undernourished, some sell themselves. And the store employment which offers them this two-horned dilemma is replete with opportunities which in gradual, easy, attractive ways beckon to the second choice; a situation which a few employers not only seem to tolerate, but to encourage."

The police power basis of this legislation was found by the Court to rest on morals as well as on health, a point to be remembered in connection with the discussion of the Adkins case. The cases were appealed to the Supreme Court of the United States and were argued there in December of 1914. They were reargued in 1917 and decided in that year by a per curiam decision reading "Judgments affirmed with costs by an equally divided

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(*) Stettler v. O'Hara, 69 Ore. 519, 139 Pac. 743 (1914)
Simpson v. O'Hara, 70 Ore. 261, 141 Pac. 158 (1914)

(**) 139 Pac. 743, 750, 751

(***) Ibid, 747

(****) 208 U.S. 412, 28 Sup. Ct. 324, 52 L. Ed. 551.
See also Appendix to Chapter II of this work for extended discussion of this case.

court. (Mr. Justice Brandeis took no part in the consideration and decision of these cases)." (*) The fact that Justice Brandeis had been of counsel in these cases prevented him from sitting. As Thomas Reed Powell pointed out in the "The Judiciality of Minimum-Wage Legislation", published in the Harvard Law Review of March, 1924, Justice Brandeis' views on this type of legislation were well known and had he sat, he would have cast the deciding vote, thereby firmly establishing the act's constitutionality. In that article Professor Powell went on to say:

> "Though conceivably a favorable decision might later have been overruled by a differently composed Supreme Court, the experience is that police issues of this general character are finally settled by such favorable decision. A four-to-four vote, however, settles nothing, except that the particular decision below is not reversed. After this tie vote, the constitutional issue still remained an open one. A prophet would be confident that if the same Supreme Court bench had the question to decide in a case in which Mr. Justice Brandeis should sit, the answer would be in favor of the legislation. By reason of this confidence, he might add to it the further confidence that the objectors to the legislation would not again bring the issue to the Supreme Court until its personnel had changed. Such turned out to be the fact. Four changes in the Supreme Court had taken place before the issue again came before it."

In the same year that the Stettler case was decided by the Supreme Court of the United States, the Supreme Courts of Minnesota and Arkansas sustained their minimum wage laws (**). In 1918, the Supreme Courts of Washington and Massachusetts sustained the minimum wage laws of those States (***), and in 1920 four more decisions came down, two reinforcing the prior decisions of the States of Minnesota and Washington, one holding the Texas law constitutional, and one sustaining the Puerto Rico law (****). The Puerto Rico law was again sustained in 1921 in the case of People v. Porto Rican American Tobacco Company.

(*) (1917) 243 U. S. 629, 61 L.Ed. 937,37 Sup. Ct. Rep. 475.

(**)

(**) Willimas v. Evans, 139 Minn. 32, 165 N.W. 495 (1917)
State v. Crowe, 130 Ark. 273, 197 S.W. 4 (1917)

(***) Larsen v. Rice, 100 Wash. 642, 171 Pac 1037 (1918)
Holcombe V. Creamer, 231 Mass. 99, 120 N.E. 354 (1918)

(****) Miller Telephone Co. v. Minimum Wage Commission, 145 Minn. 262, 177 N.W. 341 (1920)
Spokane Hotel Company v. Younger, 113 Wash. 259, 194 Pac. 595 (1920)
Poye v. Texas (1920), 89 Texas Criminal Reporter 182 (Law repealed 1921)
People v. Alvarez (Puerto Rico)

Then came the Adkins case (*), throwing into the discard all former decisions upholding the constitutionality of minimum wage legislation for women. The minimum wage law under which this case arose was passed by Congress on September 19, 1918 for the District of Columbia (**). While under consideration by committee no one appeared in opposition. Lindley Clark shows the strong support for the measure in his discussion of its legislative background. On Page 15 of Bulletin 285 of the U. S. Bureau of Labor Statistics, Mr. Clark said:

> "It is suggestive to note that when the enactment of a minimum-wage law for the District of Columbia was being considered by Congress in 1918, instead of opposing the law, the Merchants and manufacturer's Association of the District, by its board of governors, took official action in favor of it, and was represented to that effect, at a committee hearing, by the presence of the secretary of the Association. This fact was referred to as evidence that 'the lessons of experience have not been wasted'.
>
> "The advantage of the law most clearly anticipated by the employers' representative was the better morale by the employees, and a fuller cooperation with the employer in the successful conduct of the business. The committee in its report to the House says of this action of the employers:
>
> > 'Their approval means that such legislation is recognized as being based on sound business principles, because it makes for a more efficient and more contented labor force. It also protects the fair and enlightened employer from underbidding competitors.'"

The House and Senate reports unanimously recommended this law (***). No opposition was recorded in the House when the bill was passed and only twelve voted against it in the Senate (****).

The law (*****) provided for an administrative board which had power to investigate and "to ascertain and declare * * * standards

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(*) Adkins v. Children's Hospital 261 U. S. 525 (1923)

(**) 40 Stat. at L. 960 C. 174: 4 Comp. Stat. Section 3421-½A

(***) House Report 571
Senate Report 562

(****) Vol. 56, Cong. Rec. Pt. 9, pp. 8875 et seq.; Pt. 10, pp. 10278 et seq. ; Pt. 12, pp. 604 et seq.

(*****) Op. Cit., Sections 8,9,10,12 and 18.

of minimum wages for women in any occupation within the District of Columbia and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals". If the investigation disclosed that a large number of women were receiving a wage below that necessary to protect their health and morals, it was empowered to hold conferences with representatives of employers, employees and the public. The board as a result of the information received at such conference was authorized to fix the wages for each occupation and, after a public hearing, could order employers to pay their female employees not less than the wage fixed. Violation of the order was a misdemeanor, punishable by fine and imprisonment.

The administrative board, pursuant to this procedure, fixed the minimum wages for women in various occupations. An employee of a hospital and an employee of a hotel, both adults, sought an injunction restraining the board from enforcing its order on the ground that the law was unconstitutional. The Supreme Court of the District of Columbia denied the injunction. An appeal was taken to the Court of Appeals.

Professor Powell tells graphically the history of the case in the Court of Appeals (*).

> "Then came the anomalous somersault in the case before the Court of Appeals of the District of Columbia. This involved the act of Congress applicable to the District. On the first hearing Mr. Justice Robb was unable to sit because of illness. Under statutory authority the other two Justices designated Mr. Justice Stafford of the Supreme Court of the District to sit in his place. The decision, on June 6, 1921, was two to one in favor of the statute. Chief Justice Smyth and Mr. Justice Stafford were in favor; Mr. Justice Van Orsdel was opposed. Motions for a rehearing were denied on June 22 of the same year. Three days later, Mr. Justice Robb, who had now recovered, wrote the Chief Justice that he was considering an application for a rehearing. On July, he wrote that he had decided to vote for a rehearing and had so notified counsel and Mr. Justice Van Orsdel. Later Justices Robb and Van Orsdel instructed the clerk to enter an order granting a rehearing. The Chief Justice dissented. The case was reargued on February 14, 1922, and decided on November 6, 1922 (**). The vote was two to one against the Statute. Chief Justice Smyth in dissenting severely scored the method by which a rehearing was obtained(***)."

(*) Ibid

(**) Children's Hospital v. Adkins, 284 Feb. 613 (D.C., C.A., 1922)

(***) "It would seem from the foregoing that the appellants, finding themselves defeated, sought a justice who had not sat in the case, but who they believed, would be favorable to them, and induced him, by an appeal directed to him personally, to assume jurisdiction and join with the dissenting justice in an attempt to over-rule the decisions of the court. I shall not characterize such practice; let such facts speak for themselves." Supra. at p.624 et seq.

This decision was appealed to the Supreme Court of the United States, the decision sustaining the Court of Appeals being handed down by Mr. Justice Sutherland of that body on April 9, 1923. Against the majority of five, three justices dissented, Chief Justice Taft and Associate Justices Holmes and Sanford. Justice Brandeis did not sit even though he was not disqualified, not having taken part in preparation of the Adkins case.

It should be pointed out that in enacting the Minimum Wage Law, the Congress was exercising a power granted it by Article I, Section 8, Clause 17 of the Constitution of the United States. The pertinent portion of this clause granted Congress power "To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the Government of the United States * * * *." Clause 18 gave Congress power "To make all laws which shall be necessary and proper for carrying into execution the forgoing powers * * * *." These clauses, then were grants of plenary and exclusive power to enact laws necessary and proper for the District. Under enactments covering the ten square miles of the District, there cannot be raised the question of federal ursurpation of state control over its geographical limits - for the District should be considered in this discussion as a sovereign state and the Congress as its leglislature. It is obvious, therefore, that the power invoked by Congress in legislating in the District of Columbia is much greater than that used in legislating for the country as a whole. This point and its implications are very ably discussed in the June, 1923 issue of the Virginia Law Review in an article entitled "District of Columbia Minimum Wage Case".

> "A few preliminary observations are necessary. Congress has approximately the same power over the District of Columbia that State legislature have over their respective States. Hence with regard to laws passed for the regulation of the District, Congress has much broader powers than it possesses when it legislates for the country as a whole. In national leglislation it is fundamental that Congress may not enact a law unless the Constitution gives it express or implied power to do so, since the Federal Government has only those powers which the States have, by the Constitution, conferred upon it. But in making laws for the District, Congress may pass any measure it sees fit unless forbidden by the Constitution to do so. One of these prohibitions is the 'due process of law' clause of the Fifth Amendment. The similar clause in the Fourteenth Amendment applies to the States as that in the Fifth Amendment applies to the Federal Government. For this reason, cases construing that clause in the Fourteenth Amendment are direct authority for this question(*)."

George W. Goble, in introducing his discussion of the Adkins case points out thewedding of due process and the police power in considering the constitutionality of the minimum wage legislation(**).

(*) Citing Slaughter-House cases (1872) 16 Wall.(U.S.) 36
(**) The Minimum Wage Decision, Kentucky Law Journal, November, 1923.

"In both of these cases (Lyons and Children's Hospital) the constitutionality of the minimum wage act was questioned on the ground that it was an unjustifiable interference by Congress with the liberty of contract. The cases involve the old problem of drawing the line between two contending principles - the police power on the one hand, which enables congressional action, and the constitutional guarantee against deprivation of liberty, on the other hand which denies the power of congressional action. Does the police power protect the laws' validity, or does the constitutional guarantee destroy it?

"Many times it has been decided (*) that if the public health or morals are sufficiently needy of correction, Congress is enabled through the police power to furnish the correction. But if the public health or morals are not sufficiently needy Congress is disabled, through the constitutional guarantees to furnish the correction.

"In order to sustain the constitutionality of a law under the police power it must appear (1) that there was a general need for some law, ie., that there was a health evil, moral evil, or some other public evil which needed correction, and (2) that the proposed law is reasonably calculated to remedy to some extent this evil."

Mr. Justice Sutherland, speaking for the majority, held that the fixing of minimum wages for women in private industry violated the due process clause of the Fifth Amendment to the Federal Constitution. Moreover, the majority held that a minimum wage law for women was not within the police power of the state, since there was not direct enough relation between the wages she received and her health and morals. Barbara N. Grimes in the July, 1923, issue of the California Law Review has analyzed the reasoning of the majority opinion as follows:

"1. This Court by an unbroken line of decisions has adhered to the rule that an Act of Congress is not to be declared unconstitutional unless invalid beyong rational doubt.

2. The statute in question is attacked on the ground that it authorizes an unwarranted interference with freedom of contract.

3. Freedom to contract is part of the liberty protected by the Fifth Amendment to the Constitution. This is settled by decisions and is no longer open to question.

(*) Citing Munn v. Ill, (1876) 94 U. S. 113, 24 L. Ed. 77;
Brass v. North Dakota (1894) 153 U. S. 391;
German Alliance Ins. Co. v. Lewis, (1914) 233 U. S. 389;
Block v. Hirsh, (1921) 256 U. S. 135, 65 L. Ed. 863,
16 A. L. R. 165

4. Although there is no such thing as absolute freedom to contract, yet freedom to contract is the rule and restraint the exception.

5. The legislative authority to abridge this freedom can be justified only by the existence of exceptional circumstances.

6. Whether these circumstances exist is the question to be answered.

7. Statutes interfering with liberty of freedom to contract upheld by this Court in the past fall into four groups:

Group I. Those fixing rates and charges to be exacted by businesses impressed with public interest.

Group II. Those relating to contracts for the performance of public work.

Group III. Those prescribing the character, methods, and time for payment of wages.

Group IV. Those fixing the hours of labor.

8. In the case at bar the statute does not depend upon the existence of public interest. Group I, therefore, may be laid aside as inapplicable. Group II involves not private but public contracts and may in a like manner be dismissed from consideration as inapplicable. Group III statutes in no instance interfere with the liberty of the employer and employee to fix the amount of wages, and in no sense furnish a precedent for limitation of wages. Group IV statutes, fixing the hours of labor, admittedly approach most nearly the line of principle applicable to the statute here involved. However, there is a vital difference between such cases and the case at bar; for the amount of wages to be paid and received is the real heart of every contract of employment. Legislation regulating hours leaves this heart of the contract untouched and so preserves the essential liberty of the contracting parties.

9. The selecting of women employees in industry as a special class to be protected by regulatory legislation can no longer be upheld. The doctrine that women of mature age may be subjected to restrictions upon their liberty of contract, which could not lawfully be imposed in the case of men, cannot be accepted. Great, not to say revolutionary, changes have taken place in the contractual, political and civil status of women, since the case of Mullen v. Oregon (*) and it is not unreasonable to say that the

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(*) (1908) 208 U. S. 412, 52 L. Ed. 551, 28 Sup. Ct. Rep. 324.

ancient differences between men and women have now come almost if not quite to the vanishing point.

10. The argument is therefore thrown back to the general question, 'Is legislation fixing a minimum wage for workers justifiable exercise of police power?' The answer is emphatically 'No' because,

> Firstly, it is impossible to fix a minimum wage which can apply with even approximate justice to all workers or to all women workers.
>
> Secondly, it cannot be shown that well-paid women safeguard their morals any more carefully than poorly paid women. As a means of safeguarding morals, wage-fixing legislation is without reasonable basis.
>
> Thirdly, the legislation protects only the employee and not the employer. It requires him to pay a minimum sum whether he can afford it or not. It undertakes to solve but one-half of the problem and ignores the other half which is the problem and need of the employer.
>
> Fourthly, the declared basis of the statute is the securing of a living wage to the employee, whereas the true moral requirement, implicit in every contract of employment, is that the amount paid shall be the just equivalent of the service rendered. The worker is entitled to the worth of his labor and it violates sound morality that he should be paid more.
>
> Fifthly and finally, justifying the minimum wage connotes the power to fix maximum wages. This would be a dangerous precedent."

The dissent of Mr. Justice Holmes was incisive:

> "The question in this case is the broad one, Whether Congress can establish minimum rates of wages for women in the District of Columbia with due provision for special circumstances, or whether we must say that Congress has no power to meddle with the matter at all. To me, notwithstanding the deference due to the prevailing judgment of the Court, the power of Congress seems absolutely free from doubt. The end, to remove conditions leading to ill health, immorality and the deterioration of the race, no one could deny to be within the scope of constitutional legislation. The means are means that have the approval of Congress, of many States, and of those governments from which we have learned our greatest lessons."

After discussing the inclusion in due process of the "liberty of contract", Justice Holmes went on to state particular instances

of governmental interference with liberty of contract that had been sustained, including the cases upholding the power of Congress to fix women's hours or work. He then pointed out:

"I confess that I do not understand the principle on which the power to fix a minimum for the wages of women can be denied by those who admit the power to fix a maximum for their hours of work. I fully assent to the proposition that here as elsewhere the distinctions of the law are distinctions of degree, but I perceive no difference in the kind of degree of interference with liberty, the only matter with which we have any concern, between the one case and the other. The bargain is equally affected whichever half you regulate. Muller v. Oregon, I take it, is as good law today as it was in 1908. It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women, or that legislation cannot take those differences into account. I should not hesitate to take into account if I thought it necessary to sustain this Act. Quong Wing v. Kirkendall, 223 U. S. 59, 63. But after Bunting v. Oregon, 243 U. S. 426, I had supposed that it was not necessary, and that Lochner v. New York, 198 U. S. 45, would be allowed a deserved repose."

Mr. Chief Justice Taft dissented in vigorous fashion:

"The boundary of the police power beyond which its exercise becomes an invasion of the guaranty of liberty under the Fifth and Fourteenth Amendments to the Constitution is not easy to mark. Our Court has been laboriously engaged in pricking out a line in successive cases. We must be careful, it seems to me, to follow that line as well as we can and not to depart from it by suggesting a distinction that is formal rather than real.

"Legislatures in limiting freedom of contract between employee and employer by a minimum wage proceed on the assumption that employees, in the class receiving least pay, are not upon a full level of equality of choice with their employer and in their necessitous circumstances are prone to accept pretty much anything that is offered. They are peculiarly subject to the overreaching of the harsh and greedy employer. The evils of the sweating system and of the long hours and low wages which are characteristic of it are well known. Now, I agree that it is a disputable question in the field of political economy how far a statutory requirement of maximum hours or minimum wages may be a useful remedy for these evils, and whether it may not make the case of the oppressed employee worse than it was before. But it is not the function of this Court to hold congressional acts invalid simply because they are passed to carry out economic views which the Court believes to be unwise or unsound."

The Chief Justice's discussion of the line of decisions

in the field of maximum hours is worthy of repetition:

> "The right of the legislature under the Fifth and Fourteenth Amendments to limit the hours of employment on the score of the health of the employee, it seems to me, has been firmly established. As to that, one would think, the line had been pricked out sothat it has become a well formulated rule. In Holden v. Hardy, 169 U. S. 366, it was applied to miners and rested on the unfavorable environment of employment in mining and smelting. In Lochner v. New York, 198 U. S. 45, it was held that restricting those employed in bakeries to ten hours a day was an arbitrary and invalid interference with the liberty of contract secured by the Fourteenth Amendment. Then followed a number of cases beginning with Muller v. Oregen, 208 U. S. 412, sustaining the validity of a limit on maximum hours of labor for women to which I shall hereafter allude, and following these cases came Bunting v. Oregon, 243 U. S. 426. In that case, this Court sustained a law limiting the hours of labor to any person, whether man or woman, working in any mill, factory or manufacturing establishment to ten hours a day with a proviso as to further hours to which I shall hereafter advert. The law covered the whole field of industrial employment and certainly covered the case of persons employed in bakeries. Yet the opinion in the Bunting case does not mention the Lochner case. No one can suggest any constitutional distinction between employment in a bakery and one in any other kind of a manufacturing establishment which should make a limit of hours in the one invalid, and the same limit in the other permissible. It is impossible for me to reconcile the Bunting case and the Lochner case and I have always supposed that the Lochner case was thus overruled sub silentio. Yet the opinion of the Court herein in support of its conclusions quotes from the opinion in the Lochner case as one which has been sometimes distinguished but never overruled. Certainly there was no attempt to distinguish it in the Bunting case.
>
> "However, the opinion herein does not overrule the Bunting case in express terms and therefore I assume that the conclusion in this case rests on the distinction between a minimum of wages and a maximum of hours in the limiting of liberty to contract. I regret to be at variance with the Court as to the substance of this distinction. In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received, a restriction as to one is not any greater in essense than the other, and is of the same kind."

The Adkins case marked the turning point in the courts' attitude toward minimum wage leglislation for women.

Two years later the minimum wage law of Arizona was appealed to the United States Supreme Court. (*) A per curiam decision

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(*) Murphy v. Sarsell (1925) 269 U. S. 530.

was handed down reading:

> "The Judgement of the District Court is Affirmed upon the authority of Adkins v. Children's Hospital, 261 U. S. 525. Mr. Justice Holmes requests that it be stated that his concurrence is solely upon the ground that he regards himself bound by the decision in Adkins v. Children's Hospital. Mr. Justice Brander's dissents."

This decision construed the Fourteenth Amendment to forbid the enactment by states of minimum wage laws for women, as the Adkins case had construed the Fifth Amendment. The sovereignty of the states no longer extended to laws on that subject within their own borders.

To complete the picture, the Arkansas minimum wage law was tested in the Supreme Court in 1927 on a "last chance" theory that the court might reverse itself. (*) It did not. The Arkansas law was voided on the same ground.

Meanwhile, state and district courts had not been lax in following the Adkins decision.

In 1924 the Wisconsin and Puerto Rico statutes were held unconstitutional. (**) In 1925, the laws of Kansas and Minnesota were declared void, although the Minnesota law was held constitutional in its application to minors. (***)

Following the Adkins case the laws of but two states, enacted prior to 1933, were sustained. (****)

(*) Donham v. West-Nelson Mfg. Co., 273 U. S. 657.

(**) Folding Furniture Co. v. Industrial Commission, (1924) 300 Fed. 991. People v. Laurnaga & Co., successors, limited (Puerto Rico) 32 P. R. Rep. 766.

(***) Topeka Laundry Co. v. Court of Industrial Relations (1925) 119 Kansas 12. Stevenson v. St. Clair (1925) 161 Minn. 444.

(****) Massachusetts - (1924) Commonwealth v. Boston Transcript, 249 Mass. 477 (Case turned on non-mandatory nature of Mass. law)
California -(1924) Gainer v. A. B. C. Dohrman et al.
(Though sustained in lower courts, was dropped before it reached the Supreme Court of the State)

In 1921, the Supreme Court of Kansas was called upon to decide the constitutionality of a compulsory arbitration statute under which wages were fixed by a Court of Industrial Relations (*) and the packing industry, among others, was legislatively declared to be affected with a public interest.

This was an original proceeding to compel the defendant to put into effect a scale of wages to be paid by it to its employees and to establish hours of labor as ordered by the plaintiff. The defendant in its answer raised a number of questions of law, to be disposed of in advance of the final hearing.

The defendant operated a packing house in Topeka. It argued that plaintiff could not exercise the extraordinary power of regulating wages except in cases of emergency and it was claimed that no emergency was alleged. The court in referring to the petition said it was alleged that complaint in writing was made by certain persons authorized by section 7 of the Industrial Court Act to make such complaint. The complaint alleged that a controversy had arisen between defendant and its employees engaged in the operation of defendant's packing business and that the controversy had endangered the continuous operation of the packing plant and affected the manufacture and production of the commodities necessary for human food within the City of Kansas and endangering the orderly operation of the packing plant. The court said that the petition sufficiently alleged that an emergency had arisen which justified the industrial court in taking cognizance of the complaint.

The defendant contended that the order sought to be enforced violated the Fourteenth Amendment of the Constitution of the United States in that it deprived the defendant of its property without due process of law and denied to it the protection of law. In support of this contention it was claimed that wages of the employees were not affected with a public interest so as to subject such wages to regulation by the State, that the law and order deprived defendant and its employees of the freedom of contract concerning wages and that the classification of the business to which the law applied was arbitrary and unjust. The court in its opinion said:

> "The basis of the contention that the defendant's employees cannot be governed by the industrial court is that those employees cannot be compelled to work for the wages fixed, while the defendant is compelled to operate its plant and to pay those wages.
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> "An analysis of these statutes reveals that the defendant is restricted from doing certain things with the intention of violating the law, or in other words is restricted from doing those things prohibited by the law. But the

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(*) The Court of Industrial Relations v. Chas. Wolff Packing Co. (Sup. Ct. of Kansas, 1921) 201, Pac. 418.

> defendant is not, by the law, compelled to operate its plant at a loss, nor is it prohibited from changing its business, nor from quitting the business, if it desires to do either of these things in good faith, not intending thereby to violate any provision of the act. The language of the act will bear this construction; it will uphold the validity of the act and not deprive the defendant of any constitutional right that has been urged by it."

The court said that the law governing public service corporations was analogous to the law here under consideration and pointed out that the authorities led to the conclusion that public utilities could be compelled to operate but not at a loss, that control of public service corporations was justified by the fact that they were affected with a public interest. The packing company was not a public service corporation but the legislature had declared its business affected with a public interest and for that reason it assumed to exercise control over it.

In regard to the defendant's contention that the compensation paid to its employees was not affected with a public interest the court said:

> "The state may control the rates to be charged by those who are engaged in a business affected with a public interest. Wages is one of the largest factors that go to make up the expense of conducting a business, and must be considered in determining what the rate shall be. In many instances wages cannot be increased unless rates or charges are increased, and in many instances rates or charges cannot be decreased unless wages are decreased. In all business enterprises affected with a public interest rates or charges and wages are so bound together that they cannot be separated. Rates cannot be completely controlled unless wages are controlled, and wages cannot be controlled unless charges are controlled."

The court also pointed out that numerous laws establishing minimum wages for women had been passed and upheld by the courts. In regard to this the court said:

> "Laws fixing minimum wages and hours of labor for women are justified on moral and physical grounds; laws fixing wages for men may be justified on similar although not the same ground. Sex is a proper basis for classification of the subjects of this kind of legislation, but it does not answer constitutional objections. The dangers to a man while working should be reduced to a minimum; the conditions under which he labors, so far as possible should be conducive to health and comfort. Intensive work of either mind or body, or both, should not be continued beyond his powers. A laboring man with a family, for honest work, should receive wages sufficient to enable him to feed, clothe, and shelter his family, and educate his children. If the wages received by him are not sufficient to do these things, he becomes

> discontented, and the evil consequences that flow from such discontent may follow. The state should -- it does-- have power to protect laboring men to the same extent that it protects working women."

The court also said that if under the commerce clause of the Federal Constitution, Congress could regulate wages and hours of those working on railroads the state under the police powers should be able to regulate the wages and hours of labor of those working in a packing plant operating wholly within the state, that legislation to meet emergencies arising in the state similar to those arising in the nation ought to be upheld for reasons the same or similar to those in Wilson v. New.

The demurrer to the answer was sustained.

This case, after evidence taken, was brought before this court again in 1922, 207 Pac. 806. The evidence showed that prior to the making of the order the defendant had been operating its plant at a loss and the order of the court increased the rates of wages to be paid to its employees. The question considered was: Is the order invalid for this reason? In holding the order to be valid the court said:

> "Compelling a public service corporation to render service at a loss is a violation of the prohibitions contained in the Fourteenth Amendment; but rates and wages are not the same. Rates are compensation paid by those who desire the services of public service corporations for the services of public service corporations. Wages, for the purposes now under discussion, are that part of the cost of the finished product given to those who perform service in its production. Another way of distinguishing the two is that rates are the prices paid to public service corporations for their finished product; wages are that part of the cost of the finished product given to those who perform service in its production.
>
> "The operators of a packing plant cannot by law be compelled to sell the finished product of their plant at a price that will not allow them a fair return upon the investment, but that does not say that those operating the packing plant cannot be compelled by law to pay a living wage to their employees, notwithstanding the fact that the plant is being operated at a loss. An industry of any kind that cannot be operated except at the sacrifice of its employees ought to quit business. An industry ought not be permitted to recoup its losses out of the wages of its employees, where those employees are in such a condition that they cannot prevent it."

From the decision of the state court the defendants appealed to the Supreme Court of the United States, 262 U. S. 522.

The statute was held invalid in an opinion written by Mr. Chief Justice Taft. In the opinion it was pointed out that the right of the employer on the one hand and of the employee on the other to contract about their affairs was curtailed, that this was a part of the

liberty of the individual which was protected by the guaranty of the due process clause of the Fourteenth Amendment, that the mere declaration by a legislature that a business is affected with a public interest is not conclusive of the question whether its attempted regulation on that ground is justified. The court in holding that the defendant was not clothed with such public interest as to permit the regulation herein attempted said:

> "To say that a business is clothed with a public interest, is not to determine what regulation may be permissible in view of the private rights of the owner. The extent to which an inn or a cab system may be regulated may differ widely from that allowable as to a railroad or other common carrier. It is not a matter of legislative discretion solely. It depends on the nature of the business, on the feature which touches the public, and on the abuses reasonably to be feared. To say that a business is clothed with a public interest is not to import that the public may take over its entire management and run it at the expense of the owner. The extent to which regulation may reasonably go varies with different kinds of business. The regulation of rates to avoid monopoly is one thing. The regulation of wages is another. A business may be of such character that only the first is permissible, while another may involve such a possible danger of monopoly on the one hand, and such disaster from stoppage on the other, that both come within the public concern and power of regulation.
>
> "But the chief and conclusive distinction between Wilson v. New and the case before us is that already referred to. The power of a legislature to compel continuity in a business can only arise where the obligation of continued service by the owner and its employees is direct and is assumed when the business is entered upon. A common carrier which accepts a railroad franchise is not free to withdraw the use of that which it has granted to the public. It is true that if operation is impossible without continuous loss, Brooks-Scanlon Co. v. Railroad Commission, 251 U. S. 396; Bullock v. Railroad Commission, 254 U. S. 513, it may give up its franchise and enterprise, but short of this, it must continue. Not so the owner when by mere changed conditions his business becomes clothed with a public interest. He may stop at will whether the business be losing or profitable."

The judgment of the lower court was reversed.

In 1933 spurred by the economic depression which caused increased interest in social legislation a renewed impetus was given to minimum wage legislation. The States of Connecticut, Illinois, New Hampshire, New Jersey, New York and Ohio enacted into law, with modifications, the "STANDARD MINIMUM WAGE BILL FOR WOMEN AND MINORS", (*) drafted by the National Consumers' league and approved by the Interstate Conference on Labor Compacts and the United States Department of Labor. In 1933 Massachusetts replaced its non-mandatory "publications" minimum wage law by a modified version of the standard minimum wage bill. On May 29, 1934 the general court of Massachusetts ratified the interstate compact on minimum wages which was signed in Concord, New Hampshire, by delegates from Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania and Rhode Island. In 1935 minimum wage bills were introduced in a number of states, and although not enacted into law by any state, bills passed one house in Michigan and in Pennsylvania. In this year the Illinois minimum wage law of 1933 which had an expiration date of July 1, 1935 was amended by repeal of the expiration date, making this law permanent.

The National Consumers' league gives a concise analysis of the law.

"Section 1 of the Law sets forth the Industrial conditions that demand minimum wage legislation. The inequality of their bargaining power with their employers coerces large numbers of women and minor workers to accept as wages pretty much whatever is offered, however pitiably unfair and however much they depart from the fair equivalent for the value of the services rendered. The absence of fair wage standards not only undermines the health and well-being of the workers but threatens the stability of industry itself. The present depression has led many employers to appeal to the state for the establishment of minimum wage standards as a protection to them against the unfair methods of competition of ruthless and unscrupulous competitors.

Section 2 outlines the circumstances that may be taken into account in determing what is a fair wage. In particular it provides that wages paid for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards may be considered. This is intended to emphasize the practical character of the proposed act. It seeks no abstract standard; it is designed to assist the efficient and scrupulous employers to evolve fair standards where practicable from within the industry itself.

Section 3 declares the general policy of the state against the employment of any woman or minor for less than the fair value of the service to be rendered save that the state does not attempt to regulate fair value if the wages paid are above the subsistence level.

(*) For complete text, see Appendix to this Chapter pp. 53-60

Sections 4 and 5 give to the Industrial Commissioner full and adequate investigatory powers to investigate the wages of women and minors. If he is of opinion that the wages of a substantial number in any occupation are not fair and are less than the cost of subsistence, he may appoint a wage board to report on the establishment of minimum fair wage standards.

Section 6 outlines the methods of selection and the modes of the representative wage boards.

Sections 7 and 8 describe the procedure to be followed by the Industrial Commissioner in acting upon the reports of the wage boards, and authorize the Industrial Commissioner to make necessary regulations to carry out the reports of the wage boards.

Section 9 provides for special licenses for those whose earning power is impaired.

Section 10 outlines the procedure to be followed in giving publicity to the non-observance of any directory wage orders,

Section 11 empowers the Industrial Commissioner at any time after a directory minimum wage order has been in effect for nine months to make such wage order mandatory if in his judgment persistent non-observance is a threat to the maintenance of the established standards.

Sections 12 and 13 provide for the revision of wage order and administrative regulations from time to time.

Sections 14, 15, 16, 17 and 18 include provisions for the review of questions of law, for the keeping of records by the employers, for penalties and civil redress, and for the separability of the act in case any portion is declared unconstitutional."

In support of the constitutionality of this bill, it urges the following:

"The Standard Minimum Wage Law for women and minors does not attempt to regulate wages generally. It does not fix a living wage irrespective of the nature of the work done or the value of the services rendered. Only where a substantial number of women or minors in any occupation are receiving less than a subsisting wage, may an investigation be made to determine whether the wages are fairly commensurate with the value of the service rendered. If such investigation finds that they are not, a representative wage board, acting on convincing proof, may recommend to the Industrial Commissioner the establishment of minimum fair wage standards for such occupation. After a hearing, the Industrial Commissioner may put into effect such minimum fair wage standards. For at least nine months the standards are directory only, to be vindicated, that is, only

by force of publicity. If after such trial period, non-observance is so persistent as to threaten the maintenance of the standards established, the Industrial Commissioner may, after a public hearing, make the observance of the standards mandatory and their violation subject to the penal law.

The Law permits differentiation in classes of services, lower minimum standards for learners and apprentices and special licenses for those whose earning power has been impaired. The rights and interests of every group affected are scrupulously dealt with and safeguarded. To paraphrase the language of Mr. Justice Butler in Highland v. Russell Car and Snow Plow Co., 279 U. S. 253, 262, the Law 'will be deemed to have deprived' an employer 'only of the right or opportunity by negotiation' to pay less than the fair value of the service received.

The Law does not set up any arbitrary wage standard. In determining a fair wage, a wage fairly and reasonably commensurate with the value of the service rendered, all relevant circumstances affecting the value of the service rendered may be considered. This accords with the traditional method of Anglo-American law of applying the standard of reasonableness. It is the practice that has governed the determination of rates for common carriers and of suits upon a quantum meruit for centuries. It is a practice that has guided wage boards for decades in other English-speaking countries, without own traditions of fair play and adequate scope for freedom of contract.

The Law is the result of a conscientious and mature effort by counsel for the National Consumers' League to meet the objections which a majority of the Supreme Court found against the District of Columbia law in Adkins v. Children's Hospital, 261 U. S. 525. No one, of course, can venture certain prophecy in regard to a future action of the Supreme Court, particularly in a field so uncertain as that affecting minimum wage laws, for it is important to recall that only five members of the Supreme Court joined in the majority decision in the Adkins case over the very vigorous protest of Chief Justice Taft. But it is difficult to understand the references in the majority opinion by Mr. Justice Sutherland to the value of the service rendered save as a plain intimation that a properly drawn fair wage statute, such as is now proposed, would not run counter to the Adkins case. Mr. Justice Sutherland expressly states (261 U.S. 525, 559) that a statute requiring an employer to pay in money, to pay at prescribed intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefitobtained from the service, would be understandable."

The modified standard minimum wage law enacted by New York was tested in the case of People ex rel Tipaldo v. Morehead. (*) On July 31, 1935 a decision was rendered by Mr. Justice May holding the law constitutional. The case arose on a habeas corpus instituted by the manager of a laundry in Brooklyn who imprisoned under the law for altering records to conceal the fact of his paying adult women less than the minimum wage fixed for that class pursuant to the law. The manager asserted that the statute contravened the 14th Amendment of the Federal Constitution and article 1, section 6, of the Constitution of the State of New York, in that it deprived him of liberty and property without due process of law. He relied strongly on the Adkins case. The court in quoting from the Adkins case found a loop hole in the statement "There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances * * * *". After stating that the abridgement of freedom of contract might be sanctioned "by the existence of exceptional circumstances", the court said:

> "An attempt to exhaustively review the substance of oral and written characterizations of the effect of the world-wide depression would serve no useful purpose. The court may take judicial notice that almost without warning it came upon mankind with an unforeseen and irresistible onrush that bound and fettered the world in its devastating grip. Business collapsed, our conceptions of economic and social securities were shattered, peace of mind was transformed into dread apprehension, contentment into unrest, confort gave way to hardship and sufficiency to privation. As a result of this universal catastrophe, thousands of women reared to a life of ease, maintained in comfortable surroundings inexperienced with the hardship of poverty, with no occupational training and with no business experience, suddenly found themselves engulfed in the whirlpoop of industrial strife, forced there by a calanity of hitherto unknown magnitude, compelled to there engage in a merciless and to them unfamiliar competition.
>
> "Do the dictates of reason and the common experience of mankind impel the conclusion that under these conditions these women are on a parity with men in their ability to distinguish between legitimate and unscrupulous business practices, between the honest and dishonest employer, between fair dealing and chicanery, between 'an oppressive and unreasonable wage' and a 'fair wage' as defined in the act? The Legislature has answered the inquiry in the negative as evidenced by the last sentence in section 550, which reads: 'In the considered judgment of the Legislature this article is constitutional.'
>
> "This declaration, unusual in a statute, indicates a legislative familiarity with the decisions of the higher courts

(*) 282 New York Supp. 576

with reference to legislation of this general character and amounts to a pronouncement that in the Legislature's opinion, the act in so far as it interferes with liberty of contract, is justified as a reasonable exercise of the polices power by the existence of these 'exceptional circumstances.'

"The act evidences a humane legislative intent to ameliorate human distress by affording a measure of security to women, who, by reason of unprecedented adverse conditions existing at the time were unable to adequately protect themselves in an industrial life, in which, as compared with men, they were at a disadvantage. Thus its ultimate purpose was to protect women from unscrupulous employers through the medium of a compulsory wage reasonably commensurate with the services rendered, and also to protect industry from evils which are frequently followed by unfair competition made possible by the exploitation of a designated class of employees. It would seem that public welfare is enhanced by legislation based upon human consideration of this character, legislation justified as an exercise of the police power. The Adkins case was decided at the time of an era of comparative prosperity. This court is not prepared to assert that the same conclusion would have been reached had economic and industrial conditions then been as they were at the time of the enactment here involved."

The court found that this act was within the police power of the legislature, as an attribute of sovereignty of the state.

"The police power is inherently vested in the Legislature. It was never surrendered by the several states and consequently its free exercise is not necessarily impeded by the 14th amendment to the Federal Constitution. Through the exercise of this power 'the state may regulate the relative rights and duties of all persons within its jurisdiction, so as to guard the public safety, protect the public morals, secure the public welfare and promote the common good and welfare.' (People v. Byrne, 99 Misc., 1: Jacobson v. Mass., 197 U. S. 11, p. 25: People v. Adirondack R'y Co., 160 N. Y., 225 p. 236)

"In the case last cited, in speaking of the power of taxation, the police power and the power of eminent domain, the court said that 'these powers' * * * * underlie the Constitution and rest upon necessity because there can be no effective government without them. They are not conferred by the Constitution but exist because the state exists, and they are essential to its existence. They are not rights reserved, but rights inherent in the state as sovereign. While they may be limited and regulated by the Constitution, they exist independently of it as a necessary attribute of sovereignty. They belong to the State because it is sovereign, and they are a necessity of government. The State cannot surrender them, because it cannot surrender a sovereign power. It cannot be a state without them. They are as enduring and indestructible as the state itself."

Although the question was not involved the court offered gratuitous dictum on the delegation of legislative power:

> "Although the question is not here raised it may not be inappropriate to say that it does not appear that the minimum wage law evidences an unwarranted delegation of Legislature power to an administrative board or body. The act does not authorize the exercise of unlimited discretion in an undefined field. On the contrary a standard is prescribed. That standard is found in the definition of 'a fair wage,' which limits the authorized discretion of the administrative body within the confines indicated by the definition. In this respect the act is not defective for the reasons advanced in the recent decision of the United States Supreme Court in the Schechter case."

The case was argued in the Court of Appeals (State Court of last resort) on January 23 of this year and decision is awaited.

Prior to NIRA the only attempt at federal regulation of minimum wages in other than public enterprise, in contrast to the state enactments previously discussed, was the Adamson Act. But this act is not a Rosetta stone to solve the question of constitutionality of minimum wage legislation. This Law was enacted in September of 1916 at the request of President Wilson, who sought thereby to obtain a means of averting a threatened general strike of railroad employees. (*)

The Act provided that, beginning with January 1, 1917, "Eight hours shall in contracts for labor and services be deemed a day's work for the purpose of reckoning the compensation for services of all employees * * * who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads" in interstate commerce (**).

Section 2 of the Act provides for the appointment of a commission of three to observe the operation and effect of the provisions of the first Section for a period of not less than 6 nor more than 9 months. The records to be reported to the President and Congress.

Section 3 provided that pending the report of the commission and for a period of thirty days thereafter "the compensation of the railway employees subject to this Act for a standard 8-hour work-day shall not be reduced below the present standard day's wage, and for all necessary time in excess of 8 hours such employees shall be paid at a rate not less than the pro rata share for such standard 8-hour work-day".

This Law was tested in the case of Wilson v. New, which, after being held unconstitutional in the lower court, was sustained in a 5 to 4 decision in the Supreme Court of the United States. (***)/ The plaintiff in this action was the United States Attorney for the Western District of

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(*) 39 Stat. 721
(**) Section 1, supra
(***) 243 U. S. 332 (1917)

Missouri. The defendants were receivers for the Missouri, Oklahoma and Gulf Railway Co. The suit involved an injunction to restrain the enforcement of the Adamson Act.

The Court, through Mr. Chief Justice White, said at Pages 340 and 341:

> "Was there power in Congress, under the circumstances existing, to deal with the hours of work and wages of railroad employees engaged in interstate commerce, is the principal question here to be considered. Its solution, as well as that of other questions which also arise, will be clarified by a brief statement of the conditions out of which the controversy arose.
>
> "Two systems controlled in March, 1916, concerning wages of railwoad employees; one, an eight-hour standard of work and wages with additional pay for overtime, governing on about 15 per cent of the railroads; the other, a stated mileage task of 100 miles to be performed during ten hours, with extra pay for any excess, in force on about 85 percent of the roads. The organizations representing the employees of the railroads in that month made a formal demand on the employers that, as to all engaged in the movement of trains, except passenger trains, the 100-mile task be fixed for eight hours, provided that it was not so done as to lower wages, and provided that an extra allowance for overtime, calculated by the minute at one and one-half times the rate of the regular hours' service, be established. The demand made this standard obligatory on the railroads, but optional on the employees, as it left the right to the employees to retain their existing system on any particular road if they elected to do so."

The issues which confronted the Court were summed up as follows:

> "All the propositions relied upon and arguments advanced ultimately come to two questions; first, the entire want of constitutional power to deal with the subjects embraced by the statute, and second, such abuse of the power, if possessed, as rendered its exercise unconstitutional." p. 343.

After conceding that the agreement of wages is primarily private and usually not to be prevented or controlled by public authority, the Court said at Page 347:

> "But, taking all these propositions as undoubted, if the situation which we have described and with which the act of Congress dealt be taken into view, - that is, the dispute between the employers and employees as to a standard of wages, their failure to agree, the resulting absence of such standard, the entire interruption of interstate commerce which was threatened and the infinite injury to the public interest which was imminent, - it would seem inevitably to result that the power to regulate necessarily obtained and was subject to be applied to the ex-

tent necessary to provide a remedy for the situation, which included the power to deal with the dispute, to provide by appropriate action for a standard of wages to fill the want of one caused by the failure to exert the private right on the subject, and to give effect by appropriate legislation to the regulations thus adopted."

But here, said the Court, was a situation where there had been no agreement which would result in possible damage. (Page 348):

"This must be unless it can be said that the right to so regulate as to save and protect the public interest did not apply to a case where the destruction of the public right was imminent as the result of a dispute between the parties and their consequent failure to establish by private agreement the standard of wages which was essential; in other words, that the existence of the public right and the public power to preserve it was wholly under the control of the private right to establish a standard by agreement."

The Court, at Page 350, pointed out that the regulation was necessary to prevent a stoppage of interstate commerce:

"Again, what purpose would be subserved by all the regulations established to secure the enjoyment by the public of an efficient and reasonable service if there was no power in government to prevent all service from being destroyed? Further yet, what benefits would flow to society by recognizing the right, because of the public interest, to regulate the relation of employer and employee and of the employees among themselves, and to give to the latter peculiar and special rights safeguarding their persons, protecting them in case of accident, and giving efficient remedies for that purpose, if there was no power to remedy a situation created by a dispute between employers and employees as to rate of wages, which, if not remedied, would leave the public helpless, the whole people ruined, and all the homes of the land submitted to a danger of the most serious character? And finally, to what derision would it not reduce the proposition that government had power to enforce the duty of operation if that power did not extend to doing that which was essential to prevent operation from being completely stopped by filling the interregnum created by an absence of a conventional standard of wages, because of a dispute on that subject between the employers and employees, by a legislative standard binding on employers and employees for such a time as might be deemed by the legislature reasonably adequate to enable normal conditions to come about as the result of agreements as to wages between the parties?"

The Supreme Court continued:

"If it be conceded that the power to enact the statute

was in effect the exercise of the right to fix wages where, by reason of the dispute, there had been a failure to fix by agreement, it would simply serve to show the nature and character of the regulation essential to protect the public right and safeguard the movement of interstate commerce, not involving any denial of the authority. p. 352

"In other words, considering comprehensively the situation of the employer and the employee in the light of the obligations arising from the public interest and of the work in which they are engaged, and the degree of regulation which may be lawfully exerted by Congress as to that business, it must follow that the exercise of the lawful governmental right is controlling. This results from the considerations which we have previously pointed out, and which we repeat, since, conceding that, from the point of view of the private right and private interest, as contradistinguished from the public interest, the power exists between the parties, the employers and employees, to agree as to a standard of wages free from legislative interference, that right in no way affects the lawmaking power to protect the public right and create a standard of wages resulting from a dispute as to wages and a failure therefore to establish by consent a standard. The capacity to exercise the private right free from legislative interference affords no ground for saying that legislative power does not exist to protect the public interest from the injury resulting from a failure to exercise the private right. In saying this, of course, it is always to be borne in mind that, as to both carrier and employee, the beneficent and ever-present safeguards of the Constitution are applicable, and therefore both are protected against confiscation and against every act of arbitrary power which, if given effect to, would amount to a denial of due process, or would be repugnant to any other constitutional right. And this emphasizes that there is no question here of purely private right, since the law is concerned only with those who are engaged in a business charged with a public interest, where the subject dealt with as to all the parties is one involved in that business, and which we have seen comes under the control of the right to regulate to the extent that the power to do so is appropriate or relevent to the business regulated. pp. 353, 354.

"Being of the opinion that Congress had the power to adopt the act in question, whether it be viewed as a direct fixing of wages to meet the absence of a standard on that subject, resulting from the dispute between the parties, or as the exertion by Congress of the power which it undoubtedly possessed to provide by appropriate legislation for compulsory arbitration, - a power which inevitably resulted from its authority to protect interstate commerce in dealing with a situation like that which was before it, - we conclude that the court below erred." p.359.

The Court thus disposed of the questions of the inherent right of Congress to enact this legislation and found that this statute did not violate due process of law. Mr. Justice McKenna wrote a short concurring opinion. Messrs. Justices Day, McReynolds, and Pitney wrote dissenting opinions. Mr. Justice Van Devanter concurred with Mr. Justice Pitney in his dissent.
9713.

RESUME

Prevailing wage rate laws covering public works may be enacted by the states and by the Federal Government pursuant to their authority to make contracts. Such laws have been enacted in 31 of the States, territories, and possessions. They vary in their terms and are difficult of administration, since the indefiniteness of "prevailing wages" leads to differences of opinion which must be resolved by administrative action. These laws have been strictly construed since they usually provide penal enforcement. The constitutions of the states must clearly and definitely show no restrictions on the power to enact such laws, since otherwise they will be held unconstitutional and an amendment will be required, as witnessed by the New York constitutional amendment. These enactments are restricted in their application and do not cover all types of public contracts and all types of employees working under such contracts. Within the limits of constitutional authority, the laws may be broadened so as to include more employees. They are not limited as to sex or age and may, therefore, cover men, women, and children. With the expansion of public works witnessed in the past three years, their maximum effectiveness is desirable, since they will help materially to take up the lag in employment in the heavy industries at a fair wage.

Minimum wage laws covering women and minors in private industry have been enacted by twenty-one states, the District of Columbia, and Puerto Rico. The Texas and Nebraska laws have been repealed. The laws of Arizona, Arkansas, Puerto Rico, Kansas and the District of Columbia have been held unconstitutional. Minnesota's law was declared unconstitutional in its coverage of women though sustained in its application to minors. The Massachusetts law of 1921, relying on publicity for enforcement, though sustained as to its constitutionality, has been replaced by a "Standard" minimum wage act, similar to that of New York. The laws of Colorado, New Jersey and Utah are inoperative through lack of appropriation. These laws have not been extended to cover men. This has been due in large part of the courts' restriction of the police power of the states to legislation pertaining to the health, morals, or safety of its people. Because of the traditional protection afforded to children as wards of the court and to women who have become sui juris within a comparatively recent time, and whose fitness for the functions of motherhood traditionally has been protected by the courts, the legislatures have felt, and with some justification, that legislation on minimum wages for women and minors in private industry could be more readily sustained than legislation for men. Despite this fact, however, the Supreme Court of the United States has held that the Fifth Amendment prevents the Congress of the United States from legislating on this subject in the manner in which it was attempted in the District of Columbia (*); and it has held that the 14th Amendment prevents the states from exercising this legislative prerogative to enact laws of the Arizona (**) and Arkansas (***) types.

(*) Adkins v. Children's Hospital, supra
(**) Murphy v. Sardell, supra
(***) Donham v. West-Nelson Mfg. Co., supra

It would appear from a priori reasoning that the minimum wage laws for men in private industry would be held unconstitutional. Insofar as federal legislation is concerned, the implications of the Schechter,(*) the Hoosac Mills, (**) and the Carter Coal (***) cases, discussed more fully in a subsequent chapter, seem to bear out this theory.

Minimum wage legislation of a compulsory arbitration nature has been upheld for a temporary period in a quasi public industry operating on a franchise when there was threat of a general strike because employers and employees could not agree on conditions of employment (****). But the Supreme Court of the United States held unconstitutional the fixing of wages on a permanent basis through compulsory arbitration in an industry where it has felt that the public interest is more remote(*****). The obligations of the franchise considered in Wilson v. New made it necessary to continue operation and the threatened strike would tend to prevent the operation from being successful, thereby presenting a situation in which life and property would be imperiled. The fact that the milk industry has been held to be affected with a public interest for the purpose of fixing prices in that industry would not necessarily, under this rule, be a precedent for the fixing of wages in that industry (******).

The minimum wage laws for women and minors enacted in 1933 and 1934 have been designed to meet the courts' announced objections to the laws previously held unconstitutional. The New York law has been sustained by the Supreme Court of New York in the Tipaldo (*******) case. The Ohio law is now being tested (********). This new type of minimum wage law presents a realistic approach to the economic problems now confronting this country. It demonstrates the illusory nature of the freedom of contract possessed by an employee competing for a job and a living wage against millions of unemployed. Whether the Supreme Court of the United States will frankly recognize this situation and accept an economic philosophy that will give a measure of protection to those placed at a bargaining disadvantage by economic forces, is difficult to answer. Economic duress has not been recognized in the field of contract law. It is difficult to conceive, however, that the Supreme Court of the United States will perpetuate the existing "no man's land" in which neither the sovereign states nor the Federal Government may enact minimum wage laws for its peoples' protection.

(*) A.L.A. Schechter Corporation et al v. U. S. 295 U.S. 495 (1935)

(**) U.S. v. William M. Butler, et al, Receivers of Hoosac Mills Corp. No. 401, Oct. Term 1935

(***) James Walter Carter v. Carter Coal Co., Supreme Court of the District of Columbia, in Equity No. 59374. Now on certiorari to Supreme Court of U. S. where it is numbered 636

(****) Wilson v. New, supra

(*****) Court of Industrial Relations v. Chas. Wolff Packing Co., 262 U.S. 522

(******) Nebbia v. New York, 291 U.S. 502

(*******) People ex rel Tipaldo v Morehead, supra

(********) Walker v. Chapman, In Equity 1170, District Court of United States Southern District of Ohio, Eastern Division.

The number of employees of this country now exceed the number of employers by many times. The people have expressed their will as to this type of legislation by their duly elected representatives. Will the peoples' mandates be held unconstitutional, as in the past, under the theory that such mandates infringe the civil rights guaranteed to the people by the Federal Constitution - or will the delicate balance of a five to four decision destroy the "no man's land"? That is a question which can only be answered by the Supreme Court when the next case on a minimum wage law is decided.

MINIMUM WAGES

A P P E N D I X

Prepared by

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(This appendix is incomplete and unchecked as to its accuracy due to reduction in personnel and limitation of time)

U. S. Department of Labor
DIVISION OF LABOR STANDARDS
Washington

November 11, 1935.

SUGGESTED LANGUAGE FOR A

STANDARD MINIMUM WAGE BILL FOR WOMEN AND MINORS

As drafted by
Counsel for the National Consumers' League
and approved by the
Interstate Conference on Labor Compacts
and the
United States Department of Labor
Now law (with minor modifications) in Illinois, New Hampshire, New Jersey, New York, Ohio, Massachusetts and Connecticut

An act to provide for the investigation and study of wages of women and minors employed in trade and industry in the State of ; and for the determination and establishment of minimum fair wage standards for such workers; and for the purpose of preventing unfair and oppressive exploitation of such workers; and for other purposes.

Be it enacted, etc.

Section 1. Preamble.

The employment of women and minors in trade and industry in the State of at wages unreasonably low and not fairly commensurate with the value of the services rendered is a matter of grave and vital public concern. Many women and minors employed for gain in the State of are not as a class upon a level of equality in bargaining with their employers in regard to minimum fair wage standards, and "freedom of contract" as applied to their relations with their employers is illusory. Since a very large percentage of such workers are obliged from their week-to-week wages to support themselves and others who are dependent upon them in whole or in part they are, by reason of their necessitous circumstances, forced to accept whatever wages are offered them. Judged by any reasonable standard, wages are in many cases fixed by chance and caprice and the wages accepted are often found to bear no relation to the fair value of the service rendered. Women and minors employed for gain are peculiarly subject to the over-reaching of inefficient, harsh or ignorant employers and under unregulated competition where no adequate machinery exists for the effective regulation and maintenance of minimum fair wage standards, the standards such as exist tend to be set by the least conscionable employers. In the absence of any effective minimum fair wage rates for women and minors, the constant lowering of wages by unscrupulous employers constitutes a serious form of unfair competition against other employers, reduces the purchasing power of the workers, and threatens the stability of industry. The

evils of oppressive, unreasonable and unfair wages as they affect women and minors employed in the State of are such as to render imperative the exercise of the police power of the State for the protection of industry and of the women and minors employed therein and of the public interest of the community at large in their health and well-being and in the prevention of the deterioration of the race. In the considered judgment of the legislature this Act in all its parts is constitutional.

Section 2. Definitions as used in this Act:

a - "Commissioner" shall mean the industrial commissioner.

b - "Director" shall mean the director or any deputy director of the minimum wage division.

c - "Wage Board" shall mean a board created as provided in section 6 of the Act.

d - "Woman" shall mean a female of twenty-one years or over.

e - "Minor" shall mean a person of either sex under the age of twenty-one years.

f - "Occupation" shall mean an industry, trade or business or branch thereof or class of work therein in which women or minors are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm.

g - "An oppressive and unreasonable wage" shall mean a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health.

h - "A fair wage" shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered. In establishing a minimum fair wage for any service or class of service under this Act the commissioner and the wage board without being bound by any technical rules of evidence or procedure (1) may take into account all relevant circumstances affecting the value of the service or class of service rendered, and (2) may be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid, and (3) may consider the wages paid in the State for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards.

i - "A directory order" shall mean an order the nonobservance of which may be published as provided in section 11 of this Act.

j - "A mandatory order" shall mean an order the violation of which shall be subject to the penalties prescribed in section 18b of this Act.

Section 3.

It is hereby declared to be against public policy for any employer to employ any woman or minor in an occupation in this State at an oppressive and unreasonable wage as defined in section 2 of this Act and any contract, agreement or understanding for or in relation to such employment shall be null and void.

Section 4. Administrative agency--powers and duties.

a - There shall be set up, by the commissioner, as a separate division in the Department of Labor, a minimum wage division with a director in charge and with such deputy directors and other assistants and employees as the commissioner may deem desirable.

b - The commissioner or the director or any authorized representative of the director shall have full power and authority; and it shall be his duty:

1. To investigate and ascertain the wages of women and minors employed in any occupation in the State;

2. To enter the place of business or employment of any employer of women and minors in any occupation for the purpose of examining and inspecting any and all books, registers, pay rolls, and other records of any employer of women or minors that in any way appertain to or have a bearing upon the question of wages of any such women or minors and for the purpose of ascertaining whether the orders of the commissioner have been and are being complied with; and

3. To require from such employer full and correct statements in writing when the commissioner or the director or any authorized representative of the director deems necessary, of the wages paid to all women and minors in his employment.

4. To carry out the provisions of this Act.

c - The commissioner or the director shall have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of all books, records, and other evidence relative to any matters under investigation. Such subpoenas shall be signed and issued by the commissioner or the director and shall be served and have the same effect as if issued out of the_____ Court. The commissioner or the director shall have power to cause depositions of witnesses residing within or without the State to be taken in the manner prescribed for like depositions in civil actions in the _____Court.

Section 5. Appropriation.

There is hereby appropriated the sum of _____for the purpose of carrying into effect and administering the provisions of this Act.

Section 6. Wage investigation and appointment of wage boards.

The commissioner or the director shall have the power, and it shall be the duty of the commissioner on the petition of 50 or more residents of the State, to cause an investigation to be made by the director or any authorized representative of the director, of the wages being paid to women or minors in any occupation to ascertain whether any substantial number of women or minors in such occupation are receiving oppressive and unreasonable wages as defined in Section 2. If, on the basis of information in the possession of the commissioner or the director, with or without a special investigation, the commissioner is of the opinion that any substantial number of women or minors in any occupation or occupations are receiving oppressive and unreasonable wages as defined in Section 2, he shall appoint a wage board to report upon the establishment of minimum fair wage rates for such women or minors in such occupation or occupations.

Section 7. Composition and functions of wage boards.

a - A wage board shall be composed of not more than three representatives of the employers in any occupation or occupations, an equal number of representatives of the employees in such occupation or occupations and of not more than three disinterested persons representing the public, one of whom shall be designated as chairman. The commissioner after conferring with the director shall appoint the members of such wage board, the representatives of the employers and employees to be selected so far as practicable from nominations submitted by employers and employees in such occupation or occupations. Two-thirds of the members of such wage board shall constitute a quorum and the recommendations or report of such wage board shall require a vote of not less than a majority of all its members. Members of a wage board shall serve without pay, but may be reimbursed for all necessary traveling expenses. The commissioner after conferring with the director shall make and establish from time to time rules and regulations governing the selection of a wage board and its mode of procedure not inconsistent with this Act.

b - A wage board shall have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of all books, records, and other evidence relative to any matters under investigation. Such subpoenas shall be signed and issued by a member of the wage board and shall be served and have the same effect as if issued out of the _____Court. A wage board shall have power to cause depositions of witnesses residing within or without the State to be taken in the manner prescribed for like depositions in civil actions in the _____Court.

c - The commissioner or the director shall present to a wage board promptly upon its organization all the evidence and information in the possession of the commissioner or director relating to the wages of women and minor workers in the occupation or occupations for which the wage board was appointed and all other information which the commissioner or the director deems relevant to the establishment of a minimum fair wage for such women and minors, and shall cause to be brought before the committee any witnesses whom the commissioner

or the director deems material. A wage board may summon other witnesses or call upon the commissioner or the director to furnish additional information to aid it in its deliberations.

d - Within sixty days of its organization a wage board shall submit a report including its recommendations as to minimum fair wage standards for the women or minors in the occupation or occupations the wage standards of which the wage board was appointed to investigate. If its report is not submitted within such time the commissioner may constitute a new wage board.

e - A wage board may differentiate and classify employments in any occupation according to the nature of the service rendered and recommend appropriate minimum fair rates for different employments. A wage board may also recommend minimum fair wage rates varying with localities if in the judgment of the wage board conditions make such local differentiation proper and do not effect an unreasonable discrimination against any locality.

f - A wage board may recommend a suitable scale of rates for learners and apprentices in any occupation or occupations, which scale of learners' and apprentices' rates may be less than the regular minimum fair wage rates recommended for experienced women or minor workers in such occupation or occupations.

Section 8. Action following wage board report.

A report from a wage board shall be submitted to the commissioner who shall within 10 days confer with the director and accept or reject such report. If the report is rejected the commissioner shall resubmit the matter to the same wage board or to a new wage board with a statement of the reasons for the resubmission. If the report is accepted it shall be published together with such proposed administrative regulations as the commissioner after conferring with the director may deem appropriate to implement the report of the wage board and to safeguard the minimum fair wage standards to be established, and notice shall be given of a public hearing to be held by the commissioner or the director not sooner than fifteen nor more than thirty days after such publication at which all persons in favor of or opposed to the recommendations contained in such report or in such proposed regulations may be heard.

Section 9. Directory order--including administrative regulations.

Within 10 days after such hearing the commissioner shall confer with the director and approve or disapprove the report of the wage board. If the report is disapproved the commissioner shall resubmit the matter to the same wage board or to a new wage board. If the report is approved the commissioner shall make a directory order which shall define minimum fair wage rates in the occupation or occupations as recommended in the report of the wage board and which shall include such proposed administrative regulations as the commissioner may deem appropriate to implement the report of the wage board and to safeguard the minimum fair wage standards established. Such administrative regulations may include among other things, regulations defining and governing learners and apprentices, their

rates, number, proportion or length of service, piece rates or their relations to time rates, overtime or part-time rates, bonuses or special pay for special or extra work, deductions for board, lodging, apparel or other items or services supplied by the employer, and other special conditions or circumstances; and in view of the diversities and complexities of different occupations and the dangers of evasion and nullification, the commissioner may provide in such regulations without departing from the basic minimum rates recommended by the wage board such modifications or reductions of or addition to such rates in or for such special cases or classes of cases as those herein enumerated as the commissioner may find appropriate to safeguard the basic minimum rates established.

Section 10. Special licenses.

For any occupation for which minimum fair wage rates have been established the commissioner or the director may cause to be issued to a woman or minor, including a learner or apprentice, whose earning capacity is impaired by age or physical or mental deficiency or injury, a special license authorizing employment at such wages less than such minimum fair wage rates and for such period of time as shall be fixed by the commissioner or the director and stated in the license.

Section 11. Violation of directory order--penalty.

If the commissioner or the director or any authorized representative of the director has reason to believe that any employer is not observing the provisions of any order made by him under Section 9 of this Act, the commissioner or the director may, on 15 days' notice, summon such employer to appear before the commissioner or the director to show cause why the name of such employer should not be published as having failed to observe the provisions of such order. After such hearing and the finding by the commissioner or the director of nonobservance, the commissioner may cause to be published in a newspaper or newspapers circulating within the State of and/or in such other manner as the commissioner may deem appropriate, the name of any such employer or employers as having failed in the respects stated to observe the provisions of the directory order of the commissioner. Neither the commissioner nor any authorized representative of the commissioner, nor any newspaper publisher, proprietor, editor, nor employee thereof shall be liable to an action for damages for publishing the name of any employer as provided for in this Act, unless guilty of some wilful misrepresentation.

Section 12. Mandatory order

If at any time after a directory minimum fair wage order has been in effect for three months the commissioner is of the opinion after conferring with the director that the persistent nonobservance of such order by one or more employers is a threat to the maintenance of fair minimum wage standards in any occupation or occupations the commissioner or the director may give notice of the intention of the commissioner to make such order mandatory and of a public hearing to be held not sooner than 15 nor more than 30 days after such publication at which all persons in favor of or opposed to a mandatory order may be heard by the commissioner or the director. After such hearing the commissioner, if he adheres to his opinion, may make the previous directory order or any part thereof mandatory and so publish it.

Section 13. Revision of wage orders.

At any time after a minimum fair wage order has been in effect for one year or more, whether during such period it has been directory or mandatory, the commissioner may on his own motion after conferring with the director and shall on petition of 50 or more residents of the State reconsider the minimum fair wage rates set therein and reconvene the same wage board or appoint a new wage board to recommend whether or not the rate or rates contained in such order should be modified. The report of such wage board shall be dealt with in the manner prescribed in Sections 8 and 9 of this Act provided that if the order under reconsideration has theretofore been made mandatory in whole or in part by the commissioner under Section 12 then the commissioner in making any new order or confirming any old order shall have power to declare to what extent such order shall be directory and to what extent mandatory.

Section 14. Revision of administrative regulations.

The commissioner may at any time and from time to time after conference with the director propose such modifications of or additions to any administrative regulations included in any directory or mandatory order of the commissioner without reference to a wage board, as the commissioner may deem appropriate to effectuate the purpose of this Act, provided such proposed modification or additions could legally have been included in the original order, and notice shall be given of a public hearing to be held by the commissioner or director not less than 15 days after such publication at which all persons in favor of or opposed to such proposed modifications or additions may be heard. After such hearing the commissioner may make an order putting into effect such proposed modifications of or additions to the administrative regulations as he deems appropriate, and if the order of which the administrative regulations form a part has therefore been made mandatory in whole or in part by the commissioner under Section 12, then the commissioner in making any new order shall have the power to declare to what extent such order shall be directory and to what extent mandatory.

Section 15. Right of review.

All questions of fact arising under this Act except as otherwise herein provided shall be decided by the commissioner or the director and there shall be no appeal from the decision of the commissioner or the director on any such question of fact, but there shall be a right of review by (insert court which should have jurisdiction) from any ruling or holding on a question of law included or embodied in any decision or order of the commissioner or the director. (If procedure for review is not elsewhere prescribed by law, provisions in regard to hearings, etc., should be inserted here.)

Section 16. Keeping of records.

Every employer of women and minors shall keep a record of the name, address and occupation of each such employee, together with a record of the ages of all minors under 21 years of age in his employ. He shall further keep a true and accurate record of the amount paid each pay period

to each woman and minor, and of the hours worked each day and each week by each woman and minor, and such other information as the director in his discretion shall deem material and necessary. Such records shall be kept on file for at least one year after the entry of the record. Such register and record shall be open to the inspection and transcript of the commissioner or his authorized representatives at any reasonable time, and every employer shall furnish to the commissioner or his authorized representatives on demand, a sworn statement of the same.

Section 17. Posting of minimum wage orders.

Every employer subject to a minimum fair wage order whether directory or mandatory shall keep a copy of such order posted in a conspicuous place in every room in which women or minors are employed. Employers shall be furnished copies of orders on request without charge.

Section 18. Penalties.

a - Any employer and his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on a wage board or has testified or is about to serve on a wage board or has testified or is about to testify before any wage board or in any other investigation or proceeding under or related to this Act or because such employer believes that said employee may serve on any wage board or may testify before any wage board or in any investigation or proceeding under this Act shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty nor more than two hundred dollars.

b - Any employer or the officer or agent of any corporation who pays or agrees to pay to any woman or minor employee less than the rates applicable to such woman or minor under a mandatory minimum fair wage order shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment of not less than ten nor more than ninety days or by both such fine and imprisonment, and each week in any day of which such employee is paid less than the rate applicable to him under a mandatory minimum fair wage order and each employee so paid less shall constitute a separate offense.

c - Any employer or the officer or agent of any corporation who fails to keep the records required under this Act or to furnish such records to the commissioner or the director or any authorized representative of the director upon request, or who falsifies such records or who fails to keep posted a copy of the minimum fair wage orders to which he is subject, as required by this Act, or who hinders or delays the commissioner or the director, or any authorized representative of the director in the performance of his duties in the enforcement of this Act, or refuses to admit, or locks out such official from any place of employment which he is authorized by this Act to inspect, shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than twenty-five nor more than one hundred dollars, and each day of such failure to keep the records requested under this

Act or to furnish to the commissioner or the director or any authorized representative of the director such records or other information as may be required for the proper enforcement of this Act shall constitute a separate offense.

Section 19. Collection of wages.

If any woman or minor worker is paid by his employer less than the minimum fair wage to which he is entitled under or by virtue of a mandatory minimum fair wage order he may recover in a civil action the full amount of such minimum wage less any amount actually paid to him by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer to work for less than such mandatory minimum fair wage shall be no defense to such action. At the request of any woman or minor worker paid less than the minimum wage to which he was entitled under a mandatory order the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

Section 20.

If any provisions of this Act, or the application thereof to any person or circumstance, is held invalid the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 21.

This Act shall be known as an Act to establish minimum fair wages for women and minors.

Section 22.

This Act shall take effect immediately.

STATE OF ARIZONA

1. PUBLIC WORKS

A. INDUSTRIES COVERED

Revised Code 1928, Section 1350. This was the first regulation passed by the Legislature of Arizona and covered public works performed by employees of the State or any of its political subdivisions or by contractors or subcontractors in the execution of any contract with the State or any of its political subdivisions.

On March 17, 1933, an act of the Legislature was approved regulating the wage provisions of all contracts in excess of $1,000 between the State of Arizona or any of its political subdivisions and any contractor or subcontractor for the construction, alteration, or repair of any public buildings or improvements of the State or of its political subdivisions.

B. OCCUPATIONS COVERED

All persons doing manual or mechanical labor employed by or on behalf of the State or of any of its political subdivisions. The statute defines persons employed by or on behalf of the State, etc., as persons doing manual or mechanical labor employed by contractors or subcontractors in the execution of any contract with the State, etc. Rev. Code Sec. 1350

Laborers, workmen, or mechanics employed by contractors or subcontractors in the execution of any contract or contracts for public works within the State. Rev. Code Chap. 72

C. WAGE PROVISIONS

Current rate of per diem wages. Rev. Code Sec. 1350
The prevailing rate of wages. Rev. Code Chap. 72.

D. TYPICAL PROVISIONS

"Not less than the current rate of per diem wages in the locality where the work is performed shall be paid to persons doing manual or mechanical labor so employed by or behalf of the State or of any of its political subdivisions." Rev. Code Sec. 1350

This provision of the Act of 1928 was amended on February 17, 1933 as follows: Chap. 72 should read Chap. 71.

"Not less than the minimum per diem wages fixed by the state highway commission for manual or mechanical labor performed for said commission or for contractors performing work under contract with said commission shall be paid to persons

of the State or of any of its political subdivisions." Rev. Code Sec. 1350

Every contract included within the terms of the statute shall contain a provision to the effect: Rev. Code Chap. 72.

"That the rate of wages for all laborers and mechanics employed by the contractor or any subcontractor on such public buildings or improvements shall be not less than the prevailing rate of wages for work of a similar nature in the county, city, town, village, or other civic division of the State in which the public building or improvement is located".

E. CONSTITUTIONAL BASIS

State v. Anklam et al, 1934, 31 P. (2d), 888.

It is to be noted that Revised Code 1928, Section 1350 Stated "not less than the current rate of wages per diem in the locality where the work is performed". This statute came before the Supreme Court of Arizona in the case of State v. Jay J. Garfield Building Co., 3 P (2d) 983 wherein the defendant was charged by information with violating this provision of the Code by failing to pay one of its employees the current rate of wage for work on the school building. A jury was waived and a case was tried upon the statement of facts stipulated by the parties. The defendant moved to dismiss the action on the ground, among others, that the statute was in violation of the Fourteenth Amendment of the Federal and Art. 4, Sec. 2 of the State Constitution on the ground that the statutes contained no ascertainable standard of guilt in that it could not be determined with any degree of certainty what would constitute a current wage in any locality, and that the term "locality" was fatally vague and uncertain. The lower court granted the motion to dismiss and its judgment was affirmed by the upper court on the authority of Connally v. General Construction Company, 269 U. S. 385, 70 L. Ed. 322.

It is to be noted that the court simply held the statute invalid because the "current rate of per diem wages in the locality where the work is performed" was not susceptible of determination by any known rule because "locality" is boundless and indefinite, and, second, that the "current rate of per diem wages" might be anything from the minimum up to and including the maximum wage.

The Court said:

"The decisions of the United States Supreme Court involving the construction of the federal Constitution are binding upon the state courts. If it were an open question, we would not be without authority to adopt the view that the current wage

feature of the law is sufficiently definite upon which to base a criminal prosecution for its violation. Atkin v. Kansas, supra; Elkan v. Maryland, 239 U. S. 634, 36 S. Ct. 221, 60 L. Ed. 478, following the Atkin Case; State v. Tibbetts, 21 Okl. Cr. 168, 205 P. 776; Ruark v. International Union etc., 157 Md. 576, 146 A. 797. It may be said that since the Supreme Court has decided the question both ways, we are at liberty to adopt the one appearing the sounder to us. The Atkin Case was decided in 1903 and, although the current wage feature of the Kansas statute was involved, there was no discussion of it in the court's opinion. The law was sustained but there is nothing in the opinion indicating that the question of the vagueness or indefiniteness of the statute was called to the court's attention or argued to it. In the Connally Case that was the sole issue and the case went off on that point. Because the latter is the last, as well as the only, direct affirmative expression of the court on the validity of the statute, we fell that we are bound to follow it.

The judgment is affirmed."

As noted above the Section 1350 of the Revised Code 1928 was amended in 1933 and the amended provisions came before the court in State v. Anklam et al, 31 P. (2d) 888 in which the defendants, a board of supervisors, were accused of failing to pay a janitor and common laborer performing manual labor for the county a minimum wage fixed by the state highway commission. A demurrer to the information was sustained and the State appealed. The same grounds for defense as were advanced in the Garfield case were advanced in the present case. In addition, it was contended that the employer was subjected to the arbitrary whim of the state highway commission by permitting it, the commission, without notice to him to change the minimum wage and expose him to criminal liability for failure to comply with requirements of which he had no knowledge or means of knowledge.

The court held it to be within the power of the legislature to fix hours of labor and minimum wages of employees of the state or of its political subdivisions; that the amended statute was valid because it contained ascertainable standards of guilt was specific, definite, and certain. The court said:

"The legislative adoption of a minimum wage fixed by the state highway commission, to be paid by the state and its political subdivisions for manual and mechanical labor, is not a surrender of legislative power to the highway commission. The law operates upon a fact to be ascertained by the highway commission and itself creates the crime".

Attention is directed to the fact that a month after, Section 1350 of the Revised Code was amended. The prevailing wage rate statute was passed (Chapter 71, Session Laws 1933). In the case of State v. Jastad et al, 32 P. (2d) 799, which was an appeal by the State from a judgment of the Superior Court of Pima County sustaining a demurrer to a criminal information filed against the mayor and members of the city council and the city manager of Tucson, charging them with violation

of Chapter 12, Session Laws of 1933 (known as the Minimum Wage Law). In this case it was again contended that the minimum wage law was unconstitutional and it was further contended that the "minimum wage law" was repealed by the "prevailing wage rate law". The court dismissed the question of constitutionality by reference to the case of State v. Anklam, supra and distinguished between the two statutes in the following language:

> "It will be observed that chapter 12 is a general statute, covering all kinds of mechanical and manual labor on behalf of the state or its subdivisions. On examining chapter 71, it will appear that the provisions therein affecting wages are especially limited to 'laborers or mechanics in the construction, alteration or repair of any public buildings or other improvements' where the work is done by contract and the price exceeds $1,000.
>
> "Applying the two rules of law above referred to, we are of the opinion that there is no inconsistency in the two acts and whenever public work is done by contract, and the contract price is over $1,000, the wages paid are regulated by the provisions of chapter 71, supra, while for all other classes of public work chapter 12, supra, applies".

The prevailing wage rate law, Chapter 72, 1933, was amended in 1935 by adding Sections 4 and 5 to that Act. These provisions related to definitions and penalties. Section 4, Definitions, states as follows: "The term 'locality in which the work is performed' shall be held to mean the city and county, or counties, in which the building, excavation, or other structure, project, development, or improvement, is situated, in all cases in which the contract is awarded by the State, or any officer or agency thereof, and shall be held to mean the limits of the county, city, town, township, district, or other political subdivision on behalf of which the contract was awarded". The undersigned could find nothing in Chapter 72, wherein the term "locality in which the work is performed" is used. It is assumed by conjecture that "locality" was defined by this amendment because of the case of State v. Garfield, supra, in which the term "locality" was held to be vague. It should be observed, however, that in this case Chapter 12, the minimum wage law was involved and not Chapter 72, the prevailing wage rate law. It is to be noted further that the term "general prevailing rate of per diem wages" shall be the rate determined upon by the Industrial Commission of Arizona, whose decision in the matter shall be binding and final upon all parties. The amendment further determines the manner in which the industrial commission shall ascertain the prevailing wage rate.

STATE OF ARIZONA

II MINIMUM WAGE FOR PRIVATE INDUSTRIES

A. THE LAW: Chapter 3 of the Session Laws of 1925

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

The provisions in this Act include any female employee in any store, office, shop, restaurant, dining room, hotel, rooming house, laundry or manufacturing establishment.

2. SEX COVERAGE:

All females.

3. SPECIFIC PROVISION OF THE STATUTE PROVIDING FOR MINIMUM WAGES

Section 1 provides that no person, persons, firm or corporation transacting business within the State shall employ any female in the above mentioned industries at a weekly wage of less than $16.00 per week; a lesser wage being thereby declared inadequate to supply the necessary cost of living, to maintain her in health, and to provide her with the common necessities of life.

4. CONSTITUTIONAL BASIS:

In Murphy V Sardell, 269 U.S. 530, action was brought in the District Court of the United States for the District of Arizona. The complaint sets forth that Sardell was the owner of two stores in the State of Arizona; that in the business it was necessary for him to hire and employ female labor and that he was employing four female employees each of whom received a weekly wage in an

Murphy et al, be enjoined from enforcing against him from the above mentioned provisions of the Act and a preliminary order was issued as asked for in the bill. The case was appealed to the United States Supreme Court and the Court in affirming the charge of the District Court said:

> "The judgment of the District Court is affirmed upon the authority of Adkins V Children's Hospital, 261 U. S. 525. Mr. Justice Holmes requests that it be stated that his concurrence is solely upon the ground that he regards himself bound by the decision in Adkins V Children's Hospital. Mr. Justice Brandeis dissents."*

The State statute involved in this case was held invalid by the Supreme Court on the ground that it was in violation of the Due Process Clause of the Fourteenth Amendment of the Federal Constitution. From the statement of Mr. Justice Holmes that this case was decided on the authority of Adkins V Children's Hospital which held a portion of an Act of Congress applicable to the District of Columbia invalid under the Due Process clause of the Fifth Amendment.

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* The facts of the above case except of the specific reference to the Supreme Court were taken from the Brief On Appeal.

STATE OF ARKANSAS

I. MINIMUM WAGE LAWS IN PRIVATE INDUSTRIES

A. THE LAW: Act 191, Acts of Arkansas, 1915

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

The provisions of this Act include all female employed in any manufacturing, mechanical or commercial establishment, laundry, express or transportation company in the State.

2. SEX COVERAGE:

All females.

3. SPECIFIC PROVISION OF THE ACT WHICH PROVIDE FOR MINIMUM WAGES

Section 7 provides that it shall be unlawful for any employer of labor to pay any female worker in such an establishment or occupation less than $1.25 per day, for those having had six months experience, and that the minimum wages for any inexperienced female workers who have not had six months experience shall be not less than $1.00 per day.

Section 10 provides that the minimum rate of wages may be raised or lowered if it is found that a lower or higher minimum wage is sufficient to supply a woman or female worker in any occupation, trade or industry, the necessary cost of proper living and to maintain the health and welfare of such women or minor female workers and that such wage in the opinion of the Commission therein provided is reasonable.

4. CONSTITUTIONAL BASIS:

In State V Crowe (Supreme Court, Arkansas, 1917), 197 S. W. 4, an appeal was had from a judgment for the defendant. The only issue of the case was the validity of the State statute relating to the fixing of minimum wages for females. The constitutionality of the statute was attacked on the ground that it violated the Fourteenth Amendment of the constitution by interfering with the right of contract of both employer and employee. This Court reversed the decision of the lower Court on the ground that the law was a valid exercise of the police power.

The Court in assuming at this conclusion took judicial notice of the fact that conditions with reference to the employment of women had made it necessary for many states to appoint commissions to make a detailed investigation of women's work and their wages. There had been investigations by voluntary societies, medical societies and scientists. The court said that the concensus of opinion of all these societies, medical and other scientific experts, was that inadequate wages tended to impair the health of women in all cases and in some cases to injuriously affect their morals. The court also took notice that the members of the legislature came from every county in the state and the presumption was that it passed the statute to meet a condition which it found to exist and to remedy the evil caused thereby.

In Donham et al V West-Nelson Manufacturing Company 273 U. S. 657, an action was brought in the United States District Court for the Eastern District of Arkansas, Western Division. The complainant alleged that plaintiff was engaged in the business of manufacturing articles to wear in the State of Arkansas; that in carrying on this business the plaintiff employed women and girls. That a number of available employees were desirous of entering their employment at whatever compensation they were capable of earning, but the Legislature had fixed a minimum wage of $1.00 per day which was in excess of the amount an experienced employee was able to earn; that plaintiff in order to train employees for its factories was compelled to employ inexperienced persons.

Plaintiff asked that the Acts of the Legislature specifically referred to above be set aside and held for naught. A temporary restraining order was issued against the defendants restraining them from interfering with the plaintiff for failure to comply with the Act insofar as the statute fixed and minimum wage be paid by the plaintiff to his employees who are women.

An appeal was had to the United States Supreme Court. The Court affirmed the decision of the District Court on the authority of Adkins V Children's Hospital, 261 U. S. 525. Murphy V Sardell, 269 U. S. 530. Mr. Justice Brandeis dissented.*

The State statute involved in this case was held invalid by the Supreme Court under the Fourteenth Amendment on

authority of the Adkins case which held a portion of an Act of Congress applicable to the District of Columbia invalid under the Fifth Amendment.

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* The Acts of the plaintiff mentioned in the above entitled case were obtained from one of the Briefs on Appeal.

STATE OF CALIFORNIA

I. Public Works

A. Industries Covered

California General Laws, 1931, Act 6429. Construction of public works, exclusive of maintenance work, by or on behalf of the State, or of any county, city and county, city, town, district, or other political subdivision of the State. "Public Works" is defined by section 4 as including construction work done for irrigation, utility, reclamation, improvement, and other districts, or other public agencies, public officer or body, as well as street, sewer and other improvement work done under the direction and supervision, or by the authority of any officer or public body of the State, or of any political subdivision, district, or municipality thereof, regardless of whether or not any such political subdivision, district, or municipality operates under a freeholders' charter. "Public Works" also includes construction or repair work done under contract, and paid for in whole or in part out of public funds, but it is specified that any construction or repair work done directly by any public utility company pursuant to an order of the Railroad Commission, or other public authority, shall not be included in the term "Public Works," whether or not such work is done under public supervision or direction, or paid for wholly or in part out of public funds.

In 1897, the Legislature of the state enacted a statute prescribing $2 per day as a minimum wage to be paid for labor on public works. St. 1897, p. 90. This wage may or may not have been more than the prevailing wage for labor in similar employment of that day. Apparently the validity of that statute has never been questioned, and the act was repealed in 1931. St. 1931, p. 909. (10 P. (2d) 751, at p. 758.)

B. Occupations Covered

Laborers, workmen, and mechanics employed by or on behalf of the State or of any of the political subdivisions herein specified above. Laborers, workmen, and mechanics employed upon public works shall include such persons employed by contractors or sub-contractors in the execution of any contract for public works within the State, or with any officer or public body thereof, or in the execution of any such contract with any county, city and county, city, town, township, district, or other political subdivision of the State, or with any officer or public body of such political subdivisions.

C. Wage Provisions

The prevailing rate of per diem wages.

D. Typical Provisions

Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal

holiday and overtime work, shall be paid to all laborers, workmen, and mechanics employed by or on behalf of the State of California, or by or on behalf of any county, city and county, city, town, district, or other political subdivision of the said State, engaged in the construction of public works, exclusive of maintenance work. (California Acts of 1931 Chapter 397, Section 1.)

E. Further Statutory Provisions

The public body which awards any contract for public work on behalf of the State, or on behalf of any of the political subdivisions hereinabove mentioned, is obliged to ascertain such general prevailing rate of wages in the locality in which the work is to be performed for each craft or type of workman or mechanic needed to execute the contract Such awarding body is further obliged to specify in the call for bids for such contracts and in the contracts themselves what the general prevailing rate of wage in the said locality is for each craft or type of workman needed to execute the contract, and also the general prevailing rate for legal holidays and overtime work. The decision as to such prevailing rate of the awarding public body is final.

It is mandatory upon the contractor to whom any such contract is awarded to pay not less than the specified rates. As a penalty for violation of the provisions regarding payment of the stipulated rates, the contractor or subcontractor under him is obliged to forfeit to the State of political subdivision, district or municipality thereof awarding the contract, the sum of $10 for each laborer, workman, or mechanic employed for each calendar day or portion thereof, to whom the contractor or subcontractor under him paid less than the stipulated rate. The statute further provides that the public body awarding any such contract shall cause to be inserted in the contract a stipulation as regards the above-mentioned penalty. The statute further provides that the awarding body and its officers or agents are to take cognizance of complaints of all violations regarding wages. If the contractor is found to have violated the provisions of the contract or the terms of the statute, upon a full investigation by either the division of labor statistics and law enforcement of the State department of industrial relations, or by the awarding body, that such body shall hold and retain all sums and amounts which shall have been forfeited from monies becoming due under the contract. The statute further provides that the contractor may withhold from any subcontractor sufficient sums to cover any penalities withheld from the contractor on account of the subcontractor's violation of the statute, and gives to the contractor a right of action against the subcontractor if he shall have paid the full sum due and owing to the subcontractor. The statute further requires that each contractor and subcontractor shall keep accurate records showing the names and occupations of all laborers, workmen, and mechanics employed by him in the execution of any such public works contract and the actual per diem wages paid to such workers; that such records shall be open at all reasonable hours to the inspection of the public body awarding the contract, or to the chief of the division of labor statistics and law enforcement of the State department of industrial relations, his deputies or agents. The statute further defines the term "locality in which the work is performed" as being the city and county, county or counties in which the building, highway, road, excavation or other structure, project, development or improvement is situated, in those cases where the awarding body is the State or any public

body thereof. Where the contract is made on behalf of any county, city and county, city, town, township, district, or other political subdivision, the term "locality in which the work is performed" shall mean the limits of such political subdivision. The statute provides that any officer, agent or representative of the state or of any political subdivision, district, or municipality thereof, who wilfully violates or refuses to comply with the provisions of the act, shall be guilty of a misdemeanor. It also provides that any contractor, or subcontractor, or agent or representative thereof doing public work, who shall neglects to keep an accurate record as hereinabove-mentioned, or who shall refuse to allow access to the same to persons authorized to inspect them, shall be guilty of a misdemeanor. Upon conviction of the misdemeanor hereinabove specified, the person so convicted shall be punished by a fine not exceeding $500 or by imprisonment not exceeding six months, or by both. The statute further provides that the statute is divisible as to the constitutionality of its provisions.

F. Constitutional Basis

> "***the state as the employer having full control of the terms and conditions under which will contract may, through its legislatures, and within constitutional limits, provide the wage which shall be paid to its employees and that the payment of a less sum shall be unlawful." Metropolitan Water Dist. v. Whitsett, 10 P. (2d) 751.

In the case of Metropolitan Water District v. Whitsett (supra) an application for a writ of mandate was filed to compel the respondent, chairman of the board of directors of the petitioner district, to sign a contract for the construction of a road to be used in conjunction with Colorado River aqueduct. The respondent refused to sign the contract because the petitioner district did not ascertain and specify in its notice inviting proposals and insert in the contract the general prevailing rate of per diem wages in the locality in which the work was to be performed for each craft or type of workman or mechanic needed to execute the contract as required by the public wage rate act. It was contended by the petitioner district (1) that the said act was void for uncertainty; (2) that the burden attempted to be imposed upon the petitioner was in violation of the Constitution, which forbade the legislature to impose taxes upon certain specified political subdivisions of the state; (3) that the act makes an invalid delegation of legislative power. The Court Said:

> "The legislative power of regulation and control over the affairs of the district include the power to prescribe the conditions under which the state will permit public work to be done. It is immaterial whether the state undertakes the work itself or has invested one of its governmental agencies or instrumentalities with power to do it. Atkin v. Kansas, 191 U.S. 207, 24 S. Ct. 124, 48 L. Ed. 148; Heim v. McCall, 239 U.S. 175,36 S. Ct. 78, 60 L. Ed. 206, Ann. Cas. 1917B, 287

In regard to the first contention of the petitioner it was asserted that the enactment is void for uncertainty (a) in that the phrase "general

prevailing rate of per diem wages" is not and cannot be stated as a definite amount, (b) in that the phrase "work of a similar character" is too vague to permit definition and (c) in that the phrase "in the locality in which the work is performed" is in itself uncertain and is rendered less certain by the attempt made in the act to define it. It is therefore argued that, in view of the penal provisions of the act, neither the officers of the district nor the contractors with the district may know in advance with sufficient certainty whether any act performed by them is in contravention of the statute. The petitioner district placed its main reliance in this connection upon the cases of Connally v. General Construction Co., 269 U. S. 385; State v. Garfield Building Co., (Ariz) S. P. (2d) 983; and Mayhew v. Nelson, 346 III. 381. The Court held these contentions untenable, saying,

> "In the Connally case and in the case of State v. Garfield Building Co., it is observed that the statutes therein involved imposed the duty on the contractor to determine at his peril the current rate of wages, and the locality in which the work was to be performed was not defined. In the California statute the prevailing rate of wages, which must be deemed the same as the current rate of wages, is determined by the public body awarding the contract, and the locality to be considered in fixing the rate of wages is also defined. ***In 1903 the question of the validity of a Kansas statute prescribing a limit of eight hours of labor per day on public contracts and requiring the payment of the current rate of wages on public work based on private work of a similar character came before the Supreme Court of the United States. In Atkin v. Kansas, 191 U.S. 207, 24 S. Ct. 124, 48 L.Ed.148, it was decided that the statute was a valid exercise of the power of the state in providing the conditions under which it would permit its public work to be performed. In that case the court court said, at page 222 of 191 U.S., 24S.Ct.124, 127: 'It cannot be deemed a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the state.' It is suggested by counsel that the eight-hour provision of the Kansas Statute was the subject of most of the discussion in the opinion, but the 'current rate of wages' provision was also involved and was not held invalid. It cannot be assumed that the statute would have been sustained in its entirety if the latter provision had been deemed invalid."

As regards the Illinois case (Mayhew v. Nelson, supra) which involved a statute similar to the California statute, the Court merely remarked that the Supreme Court of Illinois based its conclusion largely on the case of Rodgers v. Coler, 166 N.Y. 1, which had been long repudiated by the Court of Appeals of New York.

The Court, however, did say that the definition of the Phrase "Locality

in which the work is performed" was somewhat ambiguous but that the petitioner was embraced by both parts of the definition.

As regards the second contention of the petitioner, the Court said:

> "The difficulty with the argument is that it assumes that the burden imposed by the statute is a tax. If it is not, the argument necessarily fails. In our opinion the burden imposed by the statute is not a tax as contemplated by the Constitution. It is essentially a minimum wage law. When the schedule of wages is determined, not less than the amounts specified therein may be paid to employees on the work. The act provides that nothing therein shall be con-strued to prohibit the payment to any employee on the public work more than the prevailing rate."

As regards the third contention of the petitioner that the act made an invalid delegation of legislative power, the Court held that the legislature merely delegated the power to determine a fact or state of things upon which the law made or intended to make the act of the legislature depend.

It is to be noted that on the same day that the Metropolitan Water District case was decided, the Supreme Court of California decided the case of City of Pasadena v. Charleville, 10p. (2d) 745.. This case was also a petition for a writ of mandate to compel the respondent, as city manager of the City of Pasadena, to sign a contract authorized by the board of directors of the city for the construction of a galvanized wire fence around the city's water reservoir. The city manager refused to sign the contract on the ground that it did not contain the specification of a general prevailing rate of per diem wages. The Court merely held that the City of Pasadena was not subject to or controlled by any enactment of the legislature as to its city's municipal affairs and that the improvement contemplated by the contract was a municipal affair.

In the case of Southern California Roads Co. v. McGuire et al., 39 P. (2d) 412 (December 26, 1934), the Supreme Court stated as follows:

> "It is conceded that neither the notice inviting bids for said work nor the contract itself contained any specification of the general prevailing rate of per diem wages as provided in the Public Works Wage Rate Act enacted in 1931 (St. 1931, p. 910). The validity of this act was approved by this court in Metropolitan Water District v. Whitsett, 215 Cal.400, 10 p. (2d) 751."

This was a proceeding for a writ of mandamus directed to certain members of the board of Public Works of the City of Los Angeles requiring them to pass upon the sufficiency and form of a certain contract for the improvement of a boulevard in the City of Los Angeles, and to sign and execute said contract on behalf of the Board of Public Works. The Board of Public Works refused to execute the contract because neither the notice inviting bids nor the contract itself specified the general prevailing rate of per diem

wages in the City of Los Angeles for each craft or type of workman needed to execute it. It was held that the contract let for the improvement of a city street, constituting part of the state highway system, which was authorized by an agreement between the city and state department of the public works whereby the cost was to be defrayed by the state and the work was subject to state inspection, must comply with the provisions of general law, (the public works wage rate act) since the improvement was not a municipal affair.

The Metropolitan Water District case (supra) was cited with approval, as to the contention that the public wage rate act was an unlawful delegation of power to the awarding body, in the case of Ex perte Laswell, 36 P. (2d) 678, at 686 (1934 - District Court of Appeals.)

STATE OF CALIFORNIA

II. MINIMUN WAGE LAW FOR PRIVATE INDUSTRIES

A. THE LAW: Deerings General Laws, 1931, Title 270; Act 3613

1. INDUSTRIES AND OCCUPATIONS COVERED:

Occupations, trades and industries in which women and minors are employed.

2. OCCUPATIONS COVERED:

Women; minors (females under 21, males under 18), whose compensation for labor is measured by time, piece-work or otherwise.

NOTE: The Industrial Welfare Commission composed of five members (one woman) appointed by the Governor is empowered to grant to women physically defective, apprentices or learners, a license which authorizes them to be employed at a wage less than the minimum wage.

3. SPECIFIC PROVISION WHICH PROVIDES FOR MINIMUM WAGES:

"The Commission shall have further power after a public hearing had on its own motion or upon petition, to fix: (1) a minimum wage to be paid to women and minors engaged in any occupation, trade or industry, in this State which shall not be less than a wage adequate to supply to such women and minors the necessary cost of proper living and to maintain the health and welfare of such women and minors. . . ."

4. CONSTITUTIONAL BASIS:
This law is a legislative exercise of the State police power. No reported case has been found in which the validity of this law was determined. It appears that this Act would be held to violate the Fourteenth Amendment under Murphy v Sardell, 269 U. S. 580; Donham et al v West-Nelson Manufacturing Company, 273 U. S. 657, and Adkins v Childran's Hospital, 261 U. S. 525.

STATE OF COLORADO

I. Public Works

A. Industries Covered

Acts of 1937, Chapter 124

The act regulates every contract in excess of $5000 to which the State of Colorado is a party for the construction, alteration, or repair of any highway, building, or other public work within the geographical limits of the State.

B. Occupations Covered

Laborers or mechanics employed by any contractor or subcontractor in the construction, alteration, or repair of any highway, building, or other public work within the geographical limits of the State, in the execution of any contract in excess of $5000, to which the State is a party.

C. Wage Provisions

The prevailing rate of wages.

D. Typical Provisions

> "Every contract * * * shall contain a provision to the effect that the rate of wage for all laborers and mechanics employed by the contractor or any subcontractor on the highway, building, or other public work covered by the contracts shall be not less than the prevailing rate of wages for work of a similar nature in the city, town, village, or other civil subdivision of the State in which the highway, building, or other public work is located:"

E. Further Statutory Provisions

That the rate of pay for highway work shall not be less than the rate established by the State Highway department under the authority of the Federal Emergency Relief and Construction Act of 1932.

It is to be noted that the statute does not cover public works of the political subdivisions of the State but applies only to contracts to which the State is a party.

Laborers and mechanics employed upon public works is not specifically defined.

The statute is amiguous, it seems to the undersigned, in specifically setting forth by whom the prevailing rate of wages shall be determined. A proviso in the statute states that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature applicable to the contract, which cannot be adjusted by the contracting officer, the matter shall be referred to the Industrial Commission of Colorado, and its decision shall be conclusive on all parties to the contract. From this it would seem that the officer of the state awarding the contract is to determine the prevailing rates of wages

and if the prevailing rate decided upon by him is disputed, the matter is to be referred to the industrial commission, whose decision shall be final. This interpretation of the statute seems to be corroborated by the provision stating, "Such prevailing rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work".

The act, when passed, did not affect any existing contract or any contract that was thereafter to be entered into pursuant to invitations for bids that were outstanding at the time of such passage.

F. Constitutional Basis

Section 3 of the act reads as follows:

> "The general assembly hereby finds, determines, and declares this act to be necessary for the immediate preservation of the public peace, health, and safety."

The statute herein regulating wages has not been subject to any litigation or attack. It is to be noted, however, that in the case of Keef, et al., v. People, 87 Pac.791, a statute regulating the hours of labor was sustained on the doctrine of Atkin v. Kansas, wherein the Court held that restricting hours of labor on works of public improvement was a valid exercise of the states proprietary power to prescribe for itself and its auxiliary branches of government terms and conditions on which work of a public character should be done. The defendant in this case was convicted under an information based upon the following statute :"In all work hereafter undertaken in behalf of the state or any county, township, school district, municipality, or incorporated town, it shall be unlawful for any board, officer, agent or any contractor or subcontractor thereof to employ any mechanic, workingman, or laborer in the prosecution of any such work for more than eight hours a day".

This case was tried upon a stipulation of facts from which it appears that the defendants were contractors with the city and county of Denver and were engaged in constructing a sewer belonging to the city and had employed one E.K. to do work on it for more than eight hours in each calender day. It was also stipulated that the labor performed by E.K. was healthy outdoor work, not dangerous or in any way injurious to life, limb or health, and could be performed by E.K. for a period of nine hours a day without injury or harm to him. Counsel agreed that the statute was not within the police power of the state and the Court agreed with this conclusion. The Court said "And, in referring to the fact which was stipulated by the parties in that case, (Atkins case), as here, that the work performed by the employe of defendants was not dangerous to life, limb, or health, and labor for more than 10 hours was not injurious to him in any way, the court said that such considerations were not controlling, because the decision was based upon the broad ground that the work being of a public character, absolutely under the control of the state and its municipal agents acting by its authority, it is for the state to prescribe the conditions under which it will permit work of that kind to be done, and the legislation in question did not infringe upon the

personal rights of others".

It is therefore thought that the statute here under consideration would be constitutional if it was found that the statute itself was not vague and uncertain. The undersigned is of the opinion that the statute is ambigious, vague and uncertain.

STATE OF COLORADO

II. MINIMUM WAGE LAW IN PRIVATE INDUSTRIES

A. THE LAW: Compiled Laws 1921, Sections 4262-4283-4329

1. INDUSTRIES COVERED

Any occupation wherein women or minors under the age of eighteen years are employed. Every vocation, trade, person and industry where a female person of or over the age of eighteen years, or a minor of either sex under the age of eighteen years is employed.

2. SEX COVERAGE

All females over eighteen years of age, both sex under eighteen years of age.

3. ADMINISTRATIVE BODY

Industrial Commission

The Commission to be charged with the enforcement of this act.

4. SPECIFIC PROVISIONS OF THE ACT WHICH PROVIDE FOR MINIMUM WAGES

"It shall be unlawful to employ any woman in any occupation within the State of Colorado for wages which are inadequate to supply the necessary costs of living and to maintain in health the woman so employed; and it shall be unlawful to employ minors in any occupation within the State of Colorado for unreasonably low wages; and it shall be unlawful to employ women or minors in any occupation within this State under conditions of labor detrimental to their health and morals."

Minimum wages for minors and conditions of employment shall be made after public hearing. The Commission may hold public hearings at any time and place for the purpose of investigating any other matters it is authorized to investigate.

5. CONSTITUTIONAL BASIS

According to information received from the United States Labor Department, this Act has never gone in to force because the Legislature has not made apprpriations sufficient to put it in to effect. No case has been found in which the validity of this law was determined. It was enacted by legislative exercise of the State police power. It appears that it would be invalid under Murphy v. Sardell, 269 U. S. 530; Donham et al v. West-Nelson Manufacturing Company, 273 U. S. 657, and Adkins v. Children's Hospital, 261 U. S. 525.

STATE OF CONNECTICUT

I. Public Works

A. INDUSTRIES COVERED

General Statutes 191 - 33, Section 31 B

The Statute regulates the wage provisions of every contract for the construction, remodeling or repair of any public building by the State or any of its agents.

Note: It is assumed until the contrary appears upon a further study of the Connecticut Statutes that municipal corporations and other political subdivisions are State agents and, therefore, covered bythe provisions of this Act.

Note: It is to be noted that the Statute is limited to the construction, remodeling or repair of any public building and does not include other public works.

B. OCCUPATIONS COVERED

Mechanics, laborers, and workmen employed by any person in the construction, remodeling or repair of any public building for, or on behalf of, the State or any of its agents.

C. WAGE PROVISIONS

The Prevailing Rate of Wages

D. TYPICAL PROVISIONS

Every such contract shall contain the following provisions:

> "The wages paid to any mechanic, laborer, or workman employed upon the work herein contracted to be done shall be at a rate equal to the rate of wage customary or prevailing for the same work in the same trade or occupation in the town in which such public building is being constructed."

E. FURTHER STATUTORY PROVISIONS

Any person who knowingly or wilfully violates the wage provisions of this Section shall be fined not more than one hundred dollars for each offense.

The Statute provides in case any dispute arises as to the customary or prevailing rate of wage in any town, the Commissioner of Labor and Factory Inspection shall, after proper investigation, determine such rate of wages. His decision shall be final unless within ten days from the date of his decision an appeal is taken to the superior court in the county where such public building is being constructed, remodeled, or repaired. The above-mentioned Commissioner is authorized by the Statute to make complaint to the proper prosecution authorities for the violation of any of the provisions of this Section.

If there is no data available as to the prevailing rate of wage in the town wherein any such public building is being constructed, or so forth, the above mentioned Commissioner is authorized to make investigation and obtain data from the towns adjoining the town where such building is being constructed.

It is to be noted that the Statute does not specifically set forth what body is to determine the prevailing rate of wage. The Commissioner of Labor is to determine the rate of wage in case a dispute arises. It is, therefore, thought that the public body awarding the contract is to determine the prevailing rate of wages in the first instance as each contract must contain the statutory provision regarding such rate of wages. It is to be noted that the Statute contains a penal provision and, therefore, the Statute must be interpreted in the light of the case of Connally v. General Construction Co. If the awarding body determines the prevailing rate of wage, it is thought that such rate is sufficiently certain and definite and, therefore, not within the rule laid down by that decision. It is further thought that the "town in which the public building is being constructed" is sufficiently definite and certain.

F. CONSTITUTIONAL BASIS

The State or its agents as an employer shall have full control over the terms and conditions, within constitutional limits, under which it will contract. No cases have been found where the Statute has been reviewed or interpreted by the Courts of Connecticut.

STATE OF CONNECTICUT

II. MINIMUM WAGE LAWS IN PRIVATE INDUSTRIES

A. THE LAW:

1. INDUSTRIES COVERED:

Sweat shops defined in the statute as being an industry, trade, business or occupation which pays to its employees an unfair and oppressive scale of wages in which women or minors are gainfully employed, but not including domestic service in the home of the employer or labor on a farm.

1A - Sex and Age Coverage: Women and Minors

2. OCCUPATIONS COVERED:

Services of women or minors where gainfully employed.

3. SPECIFIC PROVISION WHICH PROVIDES FOR MINIMUM WAGES:

The Commission shall create a wage board composed of not more than three representatives of the employers, an equal number of representatives of employees and not more than three disinterested persons representing the public. Within sixty days of its organization the wage board shall submit a report including its recommendations as to minimum fair wage standards for the women or minors in the occupation. If the wage board report is not submitted within time then the commission may construct a new wage board. A wage board may differentiate and classify employments in any occupation according to the nature of the service rendered and recommend appropriate minimum wages for different employments. The wage board may recommend minimum fair wages varying with localities if in its judgment such be proper. The wage board may recommend a suitable scale of rates for learners and apprentices which may be less than the regular minimum fair wage for experienced women or minors.

For any occupation for which minimum wages have been established, the commission may issue to a woman or minor, including a learner or apprentice, whose earning capacity is impaired by age or physical or mental defect or inquiry, a special license authorizing employment at such wage less than the minimum wage and for such period of time as shall be fixed by license. Any woman or minor paid less than the minimum wage may recover in a civil action the full amount. The woman or minor may assign the claim to the Commissioner who may bring action for the benefit of the employer.

4. CONSTITUTIONAL BASIS:

The constitutional basis for this law is a legislative exercise of the State police power. No case has been found in which the validity of this law was determined.

STATE OF DELAWARE

I. Public Works

A. INDUSTRIES COVERED

Revised Code 1915, 2161, Section 45: Acts of 1933 Chapter 172. The Revised Code of 1915, which applies only to the municipal corporations of the City of Wilmington, regulates the wages of specified employees on all public work or upon any material to be used upon or in connection with such public work. Each contract for such public work must contain a stipulation that each of the specified employees employed by any contractor, subcontractor, or other person on, about, or upon such public work shall receive the wages provided for in the Act (Section 46).

The Acts of 1933, Chapter 172, which are amendments to the Revised Code of 1915, covers all contractors or subcontractors contracting for the construction, alteration, or repair of any public work for which the State of Delaware appropriates any part of the funds.

Note: Section 3, the repealing clause of Chapter 172, states all acts or parts of acts not consistent with the provisions of this Act be and the same are hereby repealed only to the extent of such inconsistency. It would seem, therefore, that this amendment would apply to the City of Wilmington and the other municipal corporations, of which there are four, and other political subdivisions where the State appropriates any part of the funds for the construction, alteration, or repair of any public work. If this is so, Chapter 172 would indicate that a state, department, board, or commission would be the awarding body of such contract and not the municipalities or other political subdivisions.

B. OCCUPATIONS COVERED

(Revised Code of 1915) All classes of laborers, workmen, or mechanics employed upon public work or upon any material to be used in connection with such public work. These laborers, workmen, and mechanics are only those which are employed in the performance of such contracts to which the City of Wilmington is a party.

(Chapter 172, Acts of 1933) Laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair of any public work for which the State appropriates any part of the funds.

C. WAGE PROVISIONS

Revised Code 1915, (Section 46) The Prevailing Rate of Wages. Act of 1933, (Chapter 172) The Minimum Rate of Wages.

D. TYPICAL PROVISIONS

(Revised Code of 1915, Section 46).

"The wages to be paid***shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality in the State where such public work, on, about, or in connection with which such labor is performed, in its final or completed form is to be situated, erected, or used."

(Acts of 1933, Chapter 172).

"Specifications***which, as far as possible, contain the minimum rate of wages which may be paid by the contractors, or his subcontractors, for the work performed by laborers and mechanics employed on such public work, and such laborers and mechanics shall be paid not less than such minimums wage or wages."

E. FURTHER PROVISIONS

Revised Code 1915.

Penalties. Each such contract must contain a provision that the contract shall be void unless the person or corporation making the same shall comply with all provisions of the chapter and further that no person or corporation shall be compensated for any work done upon any contract where such person or corporation violates the provisions of this chapter.

Section 47 recites the penalty for violation or evasion of the provisions of this Chapter by public officials, which is dismissal from office. It also specifies who may maintain suits to receive monies paid to contractors who have violated the provisions of the Chapter.

(Acts of 1933, Chapter 172)

Every contract entered into upon specifications which stipulate a penalty of an amount equal to three times the difference between the minimum wage contained in the specifications and the wage actually paid to such employees for each day during which he has been employed at a wage less than the minimum. It is further provided that any officer or inspector shall upon observation or investigation report any such violations to the department, board, or commission which awarded the contract and that all such penalties shall be withheld or deducted for the use of the State from any monies due the contractor for violations by him or his subcontractors.

Attention is again called to the fact that the Revised Code of 1915 applies only to the City of Wilmington. As

regards the Revised Code of 1915, it is necessary in order to interpret it to consider the other sections of that chapter.

Section 44 of the Act states that eight hours shall constitute a legal day's work for all classes of employees employed by the municipal corporation of the City of Wilmington.

Section 45 states that each contract to which the City of Wilmington is a party which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no such person in the employ of the City of Wilmington, contractor, subcontractor, or other person doing or contracting to do the whole or a part of the work contemplated by the contractor shall be required to work more than eight hours in any one calendar day, except in case of extraordinary emergency caused by fire, flood, or damage to life or property.

F. CONSTITUTIONAL BASIS

No cases have been found where either the Code or the Acts of 1933 have been reviewed or interpreted by the courts. The constitutional basis would be that the state or the city as the employer shall have full control over the terms and conditions within the constitutional limits under which it will contract.

Note: Attention is directed to the fact that the Code of 1915 does not specify what officer or body shall determine the prevailing rate of wage. It would also seem that the locality where the work is performed is indefinite and vague. Although in the case of Connally v. General Construction Co., and the Arizona case of State v. Garfield, a prevailing wage rate statute containing a penal provision was under consideration and in which, because of the penal provision, the statutes were unconstitutional as being vague, indefinite and uncertain. It might well be held that the Delaware Statutes which contain no penal provisions might be invalid because of ambiguities. The interesting part of the 1915 Code is that it regulates the wages of the specified employees employed upon any material used upon or in connection with the public work covered by the contract. The question of how far a state can regulate the wages of employees of materialmen who furnish material for such public work deserves further consideration.

As regards Acts of 1933, Chapter 172, which provides that the specifications upon which such contracts are entered into shall contain a minimum rate of wages which may be paid by the contractor, it is assumed that the state, department, board, or commission which awarded the contract shall determine the minimum wage. There are no standards set up for such determination and under the statute such awarding body might arbitrarily fix any rate of wage as the minimum which might be paid. The undersigned is of the opinion that both the Revised Code of 1915 and the Amendments of 1933 are confusing and ambiguous.

District of Columbia

I. Public Works (46 U. S. Stat. L. 1494, Ch. 411)

(A) Extent of occupation and industry covered.

Every contract in excess of $5000.00 in amount to which the United States or the District of Columbia is a party which requires or involves the employment of Laborers or Mechanics.

(B) Special statutory reference to Sex.

None.

(C) Special provisions of Legislation.

"Every contract in excess of $5000 in amount, to which the United States or the District of Columbia is a party, which requires or involves the employment of laborers or mechanics in the construction, alteration, and/or repair of any public building of the United States or the District of Columbia within the geographical limitations of the States of the Union or the District of Columbia, shall contain a provision to the effect that the rate of wages for all laborers and mechanics employed by the contractor or any subcontractor on the public building covered by the contract shall be not less than the prevailing rate of wages for work of a similar nature in the city, town, village, or other civil division of the State in which the public buildings are located, or in the District of Columbia, if the public buildings are located there, and a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature applicable to the contract which cannot be adjusted by the contracting officer, the matter shall be referred to the Secretary of Labor for determination and his decision thereon shall be conclusive on all parties to the contract:
Provided, that in case of national emergency the President is authorized to suspend the provisions of this act."

(D) Constitutional Basis (to be inserted later)

DISTRICT OF COLUMBIA

II. MINIMUM WAGE LAWS IN PRIVATE INDUSTRIES:

A. THE LAW: 40 Stat. at L. 960 C. 174 Comp. Stat. Section 3421-1/2A, Federal Stat. Anno Supra. 1919, p. 234

1. INDUSTRIES AND OCCUPATIONS COVERED:

Any occupation in which women and/or minors are employed. Occupation includes a business, industry, trade, or branch thereof, but shall not include domestic service.

2. SEX AND AGE COVERAGE:

Women of eighteen years of age and over, and minors of either sex under the age of eighteen years.

3. ADMINISTRATIVE BODY CHARGED WITH ENFORCEMENT:

The Act provides for a Minimum Wage Board to be composed of three members appointed by the Commissioner of the District, one to be a representative of employees, one a representative of employers and one a representative of the public. The Board is given power:

1. To ascertain and determine what wages are inadequate to supply the necessary cost of living to any women in any occupation to maintain them in good health and to protect their morals; to ascertain and determine in the manner provided for in the law the standards of minimum wages for women in any occupation; and to ascertain and determine the standards of minimum wages for minors in any occupation, and what wages for such minors are unreasonably low.

2. To convene a Conference, if after investigation it is of the opinion that a substantial number of women workers in any given occupation are receiving wages less than those hereinabove referred to. The purpose of such Conference shall be to consider the subject investigated by the Board. The Conference to be composed of not more than three representatives of employers in such occupation, three representatives of employees, and three members representing the public, plus one or more members of the Board.

After considering the subject matter submitted to it by the Board, the Conference shall make and transmit to the Board a report containing its findings and recommendations as to standards of minimum wages for women workers in the occupation under inquiry, and as to what wages are inadequate to supply the necessaries hereinabove mentioned.

Note: The Board is empowered to grant to a woman whose earning capacity has been impaired by age or otherwise a special license authorizing her employment in any occupa-

tion in which only a minimum time-rate wage has been established at a wage less than such minimum time-rate.

The Conference is authorized under proper circumstances to recommend minimum wages for learners and apprentices in any occupation less than the minimum wages and the length of time that any woman worker may be kept at such minimum wages, as a learner or apprentice.

4. SPECIFIC PROVISION OF THE ACT WHICH PROVIDES FOR MINIMUM WAGES:

> "After such (public) hearing the board may, in its discretion, make and render such an order as may be proper or necessary to adopt such recommendations (of the Conference) and carry them into effect, requiring all employers in the occupation affected thereby to observe and comply with such order. Such order shall become effective 60 days after it is made. After such order becomes effective, and while it is effective, it shall be unlawful for any employer to violate or disregard any of its terms or provisions, or to employ any woman worker in any occupation covered by such order at lower wages than are authorized or permitted therein."

5. CONSTITUTIONAL BASIS:

The validity of this Act was ruled upon in Adkins V. Children's Hospital, 261 U. S. 525. In that case it was shown that the hospital employed a large number of women in various capacities with whom it had agreed upon rates of wages and compensation satisfactory to such employees, but in some instances were less than the minimum wage fixed by an order of the Board made in pursuance of the Act. The women with whom Appellee, Children's Hospital, had so contracted were all of full age and under no legal disability. This suit was brought by the Appellee in the Supreme Court of the District to restrain the Board from enforcing its order on the ground that the same was in contravention of the Constitution and particularly the Due Process clause of the Fifth Amendment.

The Supreme Court of the District dismissed the bill. Upon appeal the Court of Appeals held the Act to be unconstitutional and reversed the decree of the Trial Court. From the ruling of the Court of Appeals the case was brought before this Court. The Court in considering the validity of the Act began by making the following statement:

> "This Court, by an unbroken line of decisions from Chief Justice Marshall to the present day, has steadily adhered to the rule that every possible presumption is in favor of the validity of an act of Congress until overcome beyond rational doubt. But if by clear and indubitable demonstration a statute be opposed to the

> Constitution we have no choice but to say so. The Constitution, by its own terms, is the supreme law of the land, emanating from the people, the repository of ultimate sovereignty under our form of government."

The Court in holding that this statute was in violation of the Due Process clause of the Fifth Amendment pointed out that the freedom of contract was subject to a variety of restraints. But freedom of contract was, nevertheless, the general rule and restraint the exception. And that the legislative authority to abridge it could be justified only by the existence of exceptional circumstances. The purpose of the Act was to protect the women and minors of the District from conditions detrimental to their health and morals resulting from wages which were inadequate to maintain decent standards of living. The Court pointed out that the classification with respect to morals was without reasonable basis and that it, the Act, exacted from the employer an arbitrary payment for a purpose and a basis having no casual connection with his business, or the contract, or the work the employees was engaged to do. The Court in holding that the Act did not cover such exceptional circumstances as justified the legislative authority to abridge the freedom of contract guaranteed by the Fifth Amendment, pointed out the following objections to the Act:

1. It authorized an unconstitutional interference with the freedom of contract included within the guarantees of the due process of the Fifth Amendment. (545)

2. It was a price-fixing law, confined to adult women who were legally as capable of contracting for themselves as men. (554)

3. The price fixed by the Board created under the statute did not necessarily have any relation to the capacity of the employee. (555)

4. The price fixed was based wholly on the opinions of the members of the Board and their advisers or some of them. (555)

5. The statute applied to every occupation in the District without regard to its nature or the character of the work. (565)

6. The standard furnished by the statute for the board was too vague to be of any practical application with any reasonable degree of accuracy. (555)

7. The necessary cost of living for a woman worker and to maintain her in good health and protect her morals was not a precise sum - not even approximately so. (555)

8. The relation between earnings and morals is not capable of standardization.

9. The classification with respect to morals was without reasonable basis. (556)

10. The legislative distinction cannot be made between men and women. (556)

11. The Board fixed different minimum prices to be paid employees in different occupations. The prices varied from $1.00 to $7.50 per week. (556)

12. The statute takes account of the necessity of only one party to the contract. (557)

13. The employer is prohibited from adjusting compensation to the differing merits of his employees.

14. The statute compelled the employer to pay the minimum wage because the employee needed it but required no service of equivalent value from the employee. (557)

15. The law embraced those employers whose bargaining power might be as weak as that of the employee. (552)

16. It placed upon the shoulders of the employer the burden of supporting indigent persons, a burden if it belongs to anybody belongs to society as a whole. (558)

17. It exacted from the employer an arbitrary payment for a purpose and a basis having no causal connection with his business, or the contract or the work of the employes. (518)

18. It assumed that every employer was bound at all events to furnish a living wage. (558)

19. The necessities of the employee were alone considered, and these arose outside of the employment and are the same when there is no employment. (558)

It was also pointed out that the statute did not cover the following:

1. It did not deal with any business charged with a public interest or with public work, or to meet a temporary emergency. (554)

2. It had nothing to do with the character, methods, or periods of payments. (554)

3. It did not prescribe hours of labor or conditions under which labor is to be done. (554)

4. It was not for the protection of persons under legal disability or for the provention of fraud. (554)

5. It did not take into account any resources which the employee had. (556)

6. The cooperative economies of the family group were not taken into account. (555)

7. It did not take any account of periods of business depression which might leave the employer himself without adequate means of livelihood. (557)

Note: The Supreme Court has adhered to its ruling in the above case and the State Courts in passing on like States Statutes have, on the authority of the Adkins case, held them invalid on the ground that they violated the Due Process clause of the Fourteenth Amendment. However, a statute fixing minimum wages for women has recently been upheld in ex rel tipaldo v. Morehead by the New York Supreme Court for King's County. That case will be hereinafter considered in detail.

I. Public Works

A. Industries Covered

The act regulates every contract in excess of $5000 to which the State of Florida is a party for the construction, alteration, and/or repair of any public buildings of the State.

B. Occupations Covered

Free laborers or free mechanics employed by any contractor orsubcontractor in the construction, alteration, and/or repair of any public building of the State in the execution of any contract in excess of $5000 to which the State is a party.

C. Wage Provisions

The prevailing rate of wages.

D. Typical Provisions

"Every contract *** shall contain a provision to the effect that the rate of wagesfor all laborers and mechanics employed by the contractors, or any subcontractor, on the public buildings covered by the contract, shall not be less than the prevailing rate of wages for the work of a similar nature in the city, town, village, or other civil division of the State of Florida, in which the public buildings or building are or is located;

It is to be noted that the statute only covers public buildings of the State of Florida which are constructed, altered, or repaired under a contract to which the State is a party.

Free laborers or free mechanics are not defined. There is no separate administrative body, or officer, or board, created by the statute which is to determine what the prevailing rate of wage of work of a similar nature shall be. The statute does state, however, that in case any dispute arises as to what the prevailing rate shall be, which cannot be adjusted by the contracting officer, the matter shall be referred to the Secretary of the State for determination and his decision thereon shall be conclusive. It is assumed that elsewhere in the laws of Florida could be found statutes which specify the executive officer which would award such a contract.

The act, when passed, did not affect any existing contract or any contract that was thereafter to be entered into pursuant to invitations for bids that were outstanding at the time of such passage.

The statute does not contain any penal provision.

E. Constitutional Basis

The statute has not been the subject of any litigation within the State and it is deemed that it is constitutional under the power of the State to contract within the constitutional limitation upon such terms as it deems proper.

STATE OF IDAHO

I. Public Works

A. Industries Covered

Idaho Code, 1932 - Sec. 43-701
All public work by or on behalf of the state, county, city, township or other municipality.

Acts 1933 Chapter 111, Section 1.
State, County and Municipal and School Construction, repair and maintenance work under any of the laws of the State.

B. Occupations Covered

Idaho Code. Sec. 43-701
Laborers, workmen, mechanics and other persons employed by or on behalf of the State or any County, City, Township, or other Municipality.

Chapter 111. Acts 1933
All services performed in the construction, repair or maintenance of all state, county, municipal or school work, but does not include engineering, superintendence, management or office or clerical work.

C. Wage Provision

Idaho Code 1932, Section 43-701
Current rate per diem wage.

Acts 1933 Chapter 111
The prevailing rate of wages.

D. Typical Provisions

Idaho Code 1932 Section 43-701
"That not less than the current rate of per diem wages in the locality where the work is performed shall be paid to the laborers, workmen, mechanics, and other persons so employed by or on behalf of the State of Idaho, or any county, city, township, or other municipality of said State."

Acts of 1933, Chap.111
"In all contracts hereafter let for State, county, municipal, and school, construction, repair and maintenance work under any of the laws of this State there shall be inserted in each of said contracts a provision *** that the said contractor must further pay the standard prevailing rate of wages in effect as paid in the county seat of the county in which the work is being performed."

E. Further Statutory Provisions

Idaho Code 43-701, referring to section 43-701 states as

follows: "Any office of the State of Idaho or of any county, city, township or municipality in such State or any person acting under or for such officer or any contractor with the state or political sub-division violating any of the provisions of the two preceding sections shall for each offense be punished by a fine of not less than $50 or more than $1000 or by imprisonment of not more than six months or both, in the discretion of the Court."

Chapter 111, Acts 1933.

No contract shall be let to any person refusing to execute an agreement with the stipulated provisions; it is further provided for any violation of any provision of the Act, the awarding officer who executed the contract shall retain $500 of the contract price as liquidated damages for such violations. It is further provided that $500 shall be retained at all times until the contract is completed.

It is further provided that all acts or parts of acts in conflict with Chapter 111 are repealed.

The Constitution of Idaho, Article XIII, Section 2, adopted in 1889, contains the following provisions, "Not more than eight (8) hours actual work shall constitute a lawful days work on all state and municipal works." In 1889, the Legislature of Idaho passed a statute regulating hours on all public works and in 1911, chap. 131, section 1, which superceded the reenactment of the basic Act of 1899, there appears for the first time a provision regulating wages. It is to be noted that the Idaho Code, section 43-701 is a penal statute and under the doctrine of the General Construction Co. V. Connally, the statute would be unconstitutional because of indefiniteness and vagueness and not setting forth a sufficient standard of guilt. It is the view of the undersigned that Chapter 111 of the Acts of 1933, repeals section 43-701 of the Idaho Code, but if there are persons still embraced within the terms of that section it would be declared unconstitutional if the State attempt to enforce it.

F. Constitutional Basis

The right of the State as an employer to contract within constitutional limitations upon such conditions as it deems fitting and proper. No cases have been found wherein either of the statutes have been interpreted by the Courts.

STATE OF ILLINOIS

I. MINIMUM WAGE LAWS FOR PRIVATE INDUSTRIES

A. THE LAW: Cahill's General Revised Statutes 1933, Chapter 48, 338-358

1. INDUSTRIES AND OCCUPATIONS COVERED:

"An industry, trade, or business, or branch thereof, or class therein in which women and minors are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm."

2. SEX AND AGE COVERAGE:

Females over twenty-one years of age and persons of either sex under the age of twenty-one years.

3. ADMINISTRATIVE BODY CHARGED WITH ENFORCEMENT:

Director, Department of Labor. The act also provides for a "Wage Board" to be composed of not more than two representatives of the employers in any occupation, an equal number of representatives of employees in such occupation, and one disinterested person representing the public. The Wage Board is given power to investigate and ascertain the wages of women and minors in any occupation and to recommend fair minimum wages. The department is given power to accept or reject the report of the Wage Board.

4. SPECIFIC PROVISIONS WHICH PROVIDE FOR MINIMUM WAGES

A Fair Wage shall mean a fairly and reasonably commensurate with the value of the service or class of service rendered. It is hereby declared to be against public policy for any employer to employ any woman or minor in an occupation in this State at an oppressive or unreasonable wage, and any contract, agreement or understanding for or in relation to such employment shall be null and void.

5. CONSTITUTIONAL BASIS:

No case has been found in which the validity of this Act was determined. The basis for the Act is the legislative exercise of the State police power. The reason for the Act is set forth in the following section:

238. Necessity for reasonable standard of wages, Section 1. The employment of women and minors in trade and industry in the State of Illinois at wages

unreasonably low and not fairly commensurate with the value of the services rendered is a matter of grave and vital public concern. Many women and minors employed for gain in the State of Illinois are not as a class equally equipped for bargaining with their employers in regard to minimum fair wage standards, and "freedom of contract" as applied to their relations with their employers is in many cases illusory. Since a very large percentage of such workers are obliged from their week to week wages to support themselves and others who are dependent upon them in whole or in part, they are by reason of their necessitous circumstances, forced to accept whatever wages are offered them. Judged by any reasonable standard, wages are in many cases fixed by chance and caprice and the wages accepted are often found to bear no relation to the fair value of the service rendered. Women and minors employed for gain are peculiarly subject to the over-reaching of inefficient or unreasonable employers and are under unregulated competition where no adequate machinery exists for the effective regulation and maintenance of minimum fair wage standards, and the standards such as exist tend to be set by the least conscionable employers. In the absence of any effective minimum fair wage rates for women and minors, the constant lowering of wages by unscrupulous employers constitutes a serious form of unfair competition against other employers, reduces the purchasing power of the workers and threatens the stability of industry. The evils of oppressive, unreasonable and unfair wages as they affect women and minors employed in the State of Illinois are such as to render imperative the exercise of the police power of the State for the protection of industry and of the women and minors employed therein and of the public interest of the community at large in their health and well-being and in the prevention of the deterioration of our people.

STATE OF KANSAS

I. Public Works

A. Industries Covered

Revised Statutes, 1923, as amended 1931, Ch. 214.

The statute regulates the wage provisions of every contract for public work to which the State or any county, city, township or other municipality is a party.

B. Occupations Covered

Laborers or other persons employed by or on behalf of the State.

Note: Laborers or other persons employed by or on behalf of the State are defined to be laborers or other persons employed by contractors or sub-contractors in the execution of any contract or contracts with the State or any municipality thereof.

It is to be noted that in that section of the statute which requires that there shall be a stipulation in all such contracts for the payment of the statutory wage, the occupations there referred to are limited to laborers, workmen or mechanics. The statute in other parts speaks of laborers or other persons employed by or on behalf of the state.

C. Wage Provision

The current rate of per diem wage.

D. Typical provisions

"Not less than the current rate of per diem wage in the locality where the work is performed shall be paid to laborers or other persons so employed".

E. Further Statutory Provisions

Section 44-201 as amended, 1931 Chap. 214 defined "the current rate of per diem wage" as being the rate paid to the greater number of workmen, laborers or mechanics in the same trade, occupation or work of a similar nature. "Locality" is defined as being the county wherein the physical work is being performed: Provided, that where cities of the first and second class are located in said counties, each city shall be considered a locality.

R.S. section 44-205 reads as follows: "That any officer of the State of Kansas, or of any county, city, township or municipality of said State, or any person acting under or for such officer, or any contractor with the State of Kansas, or any county, city, township or other municipality thereof, or other person violating any of the provisions of this act, shall for each offense be punished by a fine of not less than $50 nor more than $1,000, or by imprisonment , not more than six months, or both

fine and imprisonment, in the discretion of the court".

F. Constitutional Basis:

The right of the state as an employer to contract within constitutional limitations upon such conditions as it seems fitting and proper.

This statute was considered by the Supreme Court of Kansas in the case of State v. Blaser, et al, (1933) 26 Pac. (2d) 593. The case was an appeal by the State from the judgment of the trial court sustaining a motion to quash an information which attempted to charge the defendants with violating section 44-201, in that while executing a public contract the defendants did "employ laborers and other persons at a less wage than the current rate of per diem wage in the locality where said work and labor was performed". The State contended that R.S. 54-205 provided the penalty sought to be imposed. The motion was predicated upon two grounds: first, that the statute was so indefinite as to be unconstitutional and second, that the information did not state facts sufficiently definite to form a basis of a prosecution. The Court held.

> "From what has been said above we conclude, first, that the provision in the statute to the effect that the contractor should not pay less than the current rate of per diem wages was not designed or intended by the Legislature to form the basis of a criminal prosecution, but that its purpose was to form the basis of determining civil liability to which might grow out of the relations of the parties; second, if it were intended to form the basis of criminal liability, it is void for uncertainty, under the authority of Connally v. General Const. Co., supra; and, third, that the information itself was too indefinite to charge a specific offense.
> The judgment of the court below is affirmed".

Prior to the case of Connally v. General Const. Co. 269 U.S. 385, 70 L. Ed. 322, the Kansas statute R.S. 44-201 was identical with a statute with the State of Oklahoma which was considered in the Connally case and held void for uncertainty in that the current rate of per diem wages did not denote a specific or definite sum but a minimum, maximum and intermediate amounts, indeterminately varying from time to time and because the phrase "locality" was also indefinite and uncertain. Following the decision of the Supreme Court in the Connally case the Legislature of the State of Kansas in 1931 (Chapter 214, Laws 1931) amended R.S. 44-201 so as to define the phrase "the current rate of per diem wage" and the phrase "locality". As to the amended statute the Court said:

> "Disposing first of the word "locality", as thus defined and as applied to this case, we have no difficulty in saying that, since the work here was being done in

> the city of Wichita, a city of the first class, the city is the locality referred to in the statute, although the contract under which the work was being done was made with the board of education of the city. Looking at the definition given in the statute of the phrase, "the current rate of per diem wages," and comparing that with the reasons given by the Supreme Court in Connally v. General Const. Co., supra, the definition seems to be open to all the objections stated against it in that opinion. It is conceded in the argument in this case that our statute (R.S. 44-201), in so far as it attempted to fix criminal liability upon contractors or others for not paying "the current rate of per diem wages", was open to the same infirmities as the Oklahoma statute, held invalid in Connally v. General Const. Co., supra. But it is argued that the amendment made in 1931 defining the term, "the current rate of per diem wages", cured that defect, and rendered the statute valid. We are unable to see that it has that effect. In fact the definition does but little, if anything, more than to paraphrase the objections made to the statute by the court in Connally v. General Const. Co. supra."

As can be seen from the holding of the Court it was held that R.S. 44-205, which the State contended provided the penalty sought to be imposed, did not form a basis of criminal prosecution for the payment of less than the current rate of per diem wages and that if R.S. 44-205 did so provide, 44-201 was void for uncertainty under authority of the Connally case.

The case is interesting also as regards the drafting of legislation and revision of statutes. The case reviews the hour and wage legislation of the state. Such legislation was originally passed in 1891. (Laws 1891, Chapter 114). The title of that act as passed read as follows:

> "An act constituting eight hours a day's work for all laborers, workmen, mechanics and other persons employed by or on behalf of the State of Kansas, or by or on behalf of any county, city, township or other municipality in said State, or by contractors or others doing work or furnishing material for the State of Kansas, or any county, city, township, or other municipality thereof, and providing penalties for violation of the provisions of this act."

It contained five sections:

Section 1 related to hours of labor; provided that not less than the current rate of per diem wage should be paid to laborers, workmen, mechanics and other persons employed by or on behalf of the State or any of its political subdivisions.

Section 2 provided that all contracts made by or on behalf of the State or any of its political subdivisions for the per-

formance of any work or the furnishing of any material manufactured within the state should be deemed as made upon the basis of eight hours constituting a day's work and provided further that it should be unlawful for any corporation, person or persons to require any such laborer, workmen, mechanics or other persons to work more than eight hours per day.

Section 3 provided a fine of not less than $50 nor more than $1000 or imprisonment for not more than six months or both fine and imprisonment for violation of any of the provisions of the Act by any public officer or any persons acting under or for such officer or any contract with the State, etc.

Section 2 of the Act is now R.S. 44-204 and section 3 is 44-205. The Court says in the instant case that section 2 of the Act of 1891 was the only one which specifically characterized any act or acts as being unlawful, namely the requiring or permitting the laborers, workmen or mechanics to work more than eight hours a day. It was further said by the Court that the provision with reference to "current rate of per diem wages" was not referred to in the title nor was its violation specifically made unlawful. It was said that the framers of the bill (Chapter 114, Laws 1891), nor the Legislature did not intend to make that provision a criminal offense.

Section 1 of the Act was amended in 1913. As amended it became section 5870, General Statutes of 1915, and during a process of a revision of the statutes section 1, as amended, was divided into two sections becoming R.S. 44-201 and R.S. 44-202. During the process of the revision of the statutes the title originally used in Chapter 114, Laws 1891 was omitted. As regards the amendments and revisions of the statutes the Court was faced with the question of whether or not the Committee appointed to revise the statutes of the State and the Legislature which enacted the revised statutes made the provisions relative to the current rate of per diem wages a criminal offense. The Court held that the Legislature of 1891 did not make and did not intend to make the violation of the provisions in section 1 of the Laws of 1891, pertaining to the current rate of per diem wages made specifically unlawful. And that if such was the intention of the Committee appointed to revise the statutes and the Legislature which enacted the revised statutes, the statute was void for uncertainty.

STATE OF KENTUCKY

1 PUBLIC WORKS (Sec. 4329, Carroll's Statutes 1930)

A. Extent of occupation and industry covered.

Public Roads
Manual or day labor, skilled labor, foremen, assistant engineers.

B. Special Statutory reference to sex.
None.

C. Special Provisions of Legislation.

"Wage to be allowed by fiscal court".
"Every able-bodied man for manual labor, the prevailing wages of the vicinity in which work to be done, but not less than $1.00 nor more than $3.00 per day according to service rendered.

Skilled labor, foremen and assistant engineers not more than $5.00 per day.

Day's work not less than 8 hours of actual labor.

D. Constitutional Basis (to be supplied later)

STATE OF MAINE

(1.) PUBLIC WORKS (Chap.238, Acts of 1932.

A. Extent of occupation and industry covered.

Public works including State highways. Laborers employed in.

B. Specific Statutory reference to Sex.
None.

C. Special provisions of Legislation.

Wages not less than prevailing rate paid by State for similar work done by highway commission. Each day of employment at less is separate violation.

D. Constitutional Basis (to be supplied later)

STATE OF MARYLAND

1. PUBLIC WORKS (Code Public Laws, 1930, Act 4, Sec.516-1516 B)

A. Extent of Occupation and Industry covered.

Laborers, workmen or mechanics employed by contractors or sub-contractors in Public works in Baltimore.

B. Specified Statutory reference to Sex.
None.

C. Special provisions of Legislation.

Not less than current rate per diem in locality where work is performed.

Applies against Mayor and City Council of Baltimore or person acting under or for them; contractor or sub-contractor or person acting for them.

D. Constitutional Basis (to be inserted later).

STATE OF MASSACHUSETTS

I. MINIMUM WAGE LAWS IN PRIVATE INDUSTRIES

A. THE LAW: Session Laws 1933, Chapter 267

1. OCCUPATIONS OR INDUSTRIES COVERED:

Any occupation, industry trade or business or branch thereof or class of work therein except domestic service in the home of the employer or labor on a farm.

2. SEX AND AGE COVERAGE:

Females and minors

3. ADMINISTRATIVE BODY EMPOWERED TO ADMINISTER THE LAW:

Commissioner of Labor and Industries

4. CONSTITUTIONAL BASIS:

There has been no test on this law. Under the law of 1921,(*) which provided publicity as the penalty for

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(*) General Laws 1921 - Chapter 23, Sections 1, 2 and 7. Chapter 151

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violating the wage fixed by a minimum Wage Commission, A test had in the case of Holcomb et al. v. Creamer et al. (Supreme Court of Massachusetts 1918) 120 N.E. 354.
In this case it was shown that a proceeding was had in accordance with the statute to determine wages paid to female employees in laundries. A Determination was made fixing a minimum weekly wage schedule. The publication was made as provided in the Act. Thereafter the Commission proceeded to investigate wages actually paid, in order to determine if employers were complying with the recommendations. The respondents, who were owners or officers of corporate owners of laundries, refused to furnish the required information. This proceeding was brought to compel them to do so. The Court stated that the question presented was the constitutionality of St. 1912, C. 706 as amended by St. 1913, cc.330 and 673 and St. 1914, c. 638, establishing the Minimum Wage Commission. Section 3 states the duty of the Commission to be:

> "To inquire into the wages paid to female employees in any occupation in the Commonwealth, if the Commission has reason to believe that the wages paid to a substantial number of such employees are inadequate to supply the necessary

> cost of living and to maintain the worker in health."

The Court pointed out that this statute did not prohibit any woman and her employer from making and enforcing any contract respecting her labor. The authority of the Board was limited to the making of recommendations. It could not issue any orders. The aim of the Act was to bring to bear the forces of public opinion in support of the recommendations of the Commission. The fact that the Commission was directed to make recommendations as to wages did not add an element of compulsion in law. The members of the public were free to decide from the facts stated whether the conclusions of the Commission were just and wise or oppressive and vain. The Court in holding the Act valid and in referring to the rights protected by the Federal Constitution said:

> "But these guaranties are subject to the police power. Without undertaking to define that power, it comprehends rational action by the legislative department for the protection of the public health, morals and good order, These guaranties do not go to the extent of protection against publicity respecting contracts and women and minors, which the consensus of opinion of the Commonwealth, as formulated in a statute requiring impartial investigation by a Public Board, declares wanting in affording to them necessary support."

The question of the validity of this Act has never been determined by the United States Supreme Court. The Massachusetts type of Legislation applies only a moral force for the purpose of enforcing a minimum wage. Other types of legislation for this purpose which had been passed upon by the Supreme Court add physically to moral force for the purpose of enforcing minimum wages.

STATE OF MINNESOTA

1. MINIMUM WAGE LAWS IN PRIVATE INDUSTRIES

A. THE LAW: General Statutes, 1927; Sections 4033-4034, 4210-4232.

1. OCCUPATIONS OR INDUSTRIES COVERED:

Any occupation in which women and/or minors are employed. Occupation includes any business, industry, trade, or branch thereof.

2. SEX AND AGE COVERAGE:

Women of eighteen years of age or over and minors; (females under the age of eighteen years, males under the age of twenty-one years).

3. ADMINISTRATIVE BODY EMPOWERED TO ADMINISTER THE LAW:

Industrial Commission. Commission composed of three members appointed by the Governor and by and with the advice and consent of the Senate.

4. SPECIFIC PROVISIONS OF THE ACT WHICH PROVIDE FOR MINIMUM WAGES:

> "If after investigation of any occupation the Commission is of opinion that the wages paid to one-sixth or more of the women or minors employed therein are less than living wages, the Commission shall forthwith proceed to establish legal minimum rates of wages for said occupation, as hereinafter described and provided."

If after investigation the Commission is of the opinion that wages paid to one-sixth or more of the women and minors employed in the occupation in question are less than living wages the Commission shall proceed to establish legal minimum rates of wages for that occupation by issuing an order making the wages thus determined the minimum wage in the occupation throughout the State, or within any area of the State if differences in cost of living warrant this distinction.

5. CONSTITUTIONAL BASIS:

In William v. Evans et al. (Sup.Ct.,Minn.) 165 N.W. 495, the Court pointed out that the legislature in 1913 passed an Act establishing a Minimum Wage Commission and providing for the determination and establishment of minimum wages for women and minors. The Defendants, Members of the Commission, after a hearing and investigation made

STATE OF MINNESOTA (Cont'd)

two orders fixing minimum wages for women and minors. These actions were brought to restrain the enforcement of the orders on the ground that they were unconstitutional. That is the issue in this case. In sustaining the validity of the order the Court said:
That there was a general opinion that women in trades were underpaid, that in many cases the pay they received for work during all the working hours of the day was not enough to meet the cost of reasonable living. Public investigations by publicly appointed commissions had resulted in findings to that effect. Starting with such facts there was a general opinion that these conditions were dangerous to the morals and health of the workers and of future generations as well. In the economic strife women were not on equality with men. The Court further said that such conditions exist and that laws looking to that end, i.e., to promote health, peace, morals, education or good order of the public were greatly and immediately necessary to the public welfare. It was held that the inequality of difference between men and women in the matter of ability to secure a just wage and the consequences of an inadequate wage the legislature may by law compensate for the difference. On this basis the statute was held valid.

In Stevenson v. Sinclair (Sup. Ct.,Minn.,1925) 201 N.W. 629, plaintiff, a minor, recovered judgment against defendant for the difference between the agreed wages the minor had been paid for his services and the amount fixed under the so-called Minimum Wage Act (Chapter 547, Laws 1913), and defendant appeals to this Court. This Court affirmed the judgment of the lower Court on the ground that the Act had been sustained in William v. Evans (supra) and that in subsequent decision of Adkins v. Children's Hospital, 261 U.S. 525 the Supreme Court took pains to exclude from the decision the question of the validity of the law as applied to minors. In sustaining this portion of the Act the Court said:

> "The law is attacked as unconstitutional. It was sustained by this Court in William v. Evans, 139 Minn. 32, 165 N.W. 495, 166 N.W. 504, L.R.A 1918F, 542, where its applicability to women was involved. Later a similar Act passed by Congress for the District of Columbia was considered by the Supreme Court of the United States and held violative of the federal Constitution, insofar as it attempted to fix the minimum wage for adult women. Adkins v. Children's Hospital, 261 U.S 525, 43 S. Ct.394, 67 L. Ed. 785, 24 A.L.R. 1238. However, the Court took pains to exclude from the decision the question of the validity of the law as applied to minors.

STATE OF MINNESOTA (Cont'd)

"We may assume for the purpose of this decision that the Adkins Case renders the part of our Act fixing a minimum wage for women repugnant to the federal Constitution; hence it is useless to discuss the first proposition advanced by appellant. It may well be left, as was done by the Court in Folding Furniture Works v. Industrial Com. (D.C.) 300 F 991.

"That the provisions of our Act relating to the minimum wages for minors are repugnant to the federal Constitution we cannot accept as settled. The prediction from Stetler v. O'Hara, 243 U.S.629, 37 S. Ct. 475, 61 L. Ed. 937, and the Adkins Case would seem to be that as to minors the law would now be held by that Court not to exceed the legitimate exercise of the police power of the state. That in the opinion of this Court it in any manner transgresses the limits of the state Constitution cannot be urged with any hope of success, since the opinion in William v. Evans, supra, was rendered."

STATE OF MONTANA

1. Public Works (Act 1931, ch. 102, sec. 1)

A. Extent of Occupation and Industry Covered.

All contracts for State, County, Municipal and School construction, repair, and maintenance work, Does not include engineering, superintendence, management or office clerical work.

B. Specific Statutory reference to Sex.

None.

C. Special provisions of Legislation.

Contractor must give preference to Montana resident; must pay standard prevailing rate of wages in effect as paid in the county seat of county in which work is being done. No contract to be let to any one refusing to accept provisions of statute. Act not be enforced in such way as to conflict with Federal Statute prescribing labor preference to soldiers, sailors and marines.

D. Constitutional Basis (to be inserted later)

STATE OF NEVADA

I. Public Works (Act of 1933, ch. 40)

A. Extent of Occupation and Industry covered.

Public buildings, public highways and other public works, erected by state, county, district, municipality or other sub-division of State of Nevada, or any board or commission.

All public works by person, firm, association, company or corporation under contract with state, county, district, municipality or other sub-division or any board or commission or contractor with state.

B. Specific reference to sex.

Male person over age of 18.

C. Special provisions of legislation.

Unskilled labor not less than $4.00 per 8 hour day or 50¢ per hour. Each male person over 18.

D. Constitutional Basis.

STATE OF NEW HAMPSHIRE

I. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES:

A. THE LAW: Acts of 1933, Chapter 152.

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

> "An industry, trade, or business, or branch thereof, or class therein in which women or minors are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm."

2. SEX AND AGE COVERAGE:

Women of 21 years or over and either sex under the age of 21 years.

3. ADMINISTRATIVE BODY CHARGED WITH ENFORCEMENT:

Labor Commissioner. The Act also provides for a Wage Board to be composed of not less than three representatives of employers in any occupation, an equal number of representatives of employees in such occupation, and not more than three disinterested persons representing the public to be appointed by the Commissioner; the representatives of employers and employees to be selected so far as practicable from nominations submitted by employers and employees.

The Board is given the duty and power to investigate and ascertain the wages of women and minors employed in any occupation, and to recommend minimum fair wages. The Commissioner is given the power to accept or reject the report of the Wage Board.

4. SPECIFIC PROVISION PROVIDING MINIMUM WAGE:

> A Fair Wage "shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered.
>
> "It is hereby declared to be against public policy for any employer to employ any woman or minor in an occupation in this State at an oppressive or unreasonable wage***, and any contract, agreement or understanding for or in relation to such employment shall be null and void."
>
> On the petition of 50 or more residents of the State, an investigation must be made of the wages being paid to women

and minors in any occupation to ascertain whether oppressive and unreasonable wages are being paid.

F. CONSTITUTIONAL BASIS:

No case has been found in which the validity of this Act was judicially determined. The definition of "fair wage", as set forth, distinguishes it from the Act of Congress which was held inviolate in the case of Adkins against Children's Hospital, 261 U.S. 525. In that case the Court pointed out that the minimum wage provided that an Act of Congress did not necessarily have a relation to the capacity of the employee. It was this objection which the Legislature attempted to avoid by defining "fair wage", which was made the minimum wage to women fairly and reasonably commensurate with the value of this service or class of service rendered.

STATE OF NEW JERSEY

1. Public Works (Act. of 1931, ch.242; Sec. 107-72d as amended 1932, ch. 230)

A. Extent of occupation and industry covered.

All contracts to which state or any political sub-division is party requiring employment of laborers or machanics in construction, alteration, and/or repairs of public buildings, furnishing material.

B. Specific reference to Sex.

None.

C. Special provisions of Legislation.

Not less than prevailing rate of per diem wages in the locality where work is performed. Prevailing rate to be that paid by the contractors and employers employing a majority of the workers of any craft in the county, city, township, or municipality in which the work is being done.

In case of dispute, referred to Commissioner of Labor and his decision is conclusive.

D. Constitutional Basis

STATE OF NEW JERSEY

I. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES:

A. THE LAW: Session laws 1933, Chapter 152.

1. INDUSTRIES AND OCCUPATIONS COVERED:

Any occupation, i.e., any industry, trade or business or branch thereof or class of work therein in which women or minors are gainfully employed, but shall not include domestic service in the home of the employer, or labor on a farm.

2. SEX AND AGE COVERAGE:

All females of 21 years or older and minors of either sex under the age of 21 years of age.

3. ADMINISTRATIVE BODY IN POWER TO ADMINISTER THE LAW:

The Board is given the power and duty to investigate and ascertain the wage of women and minors employed in any occupation. To differentiate and classify employment according to the nature of the service rendered and recommend minimum fair wage varying with locality. To recommend a suitable scale of rates for learners and apprentices which may be less than the regular fair wage rate. To issue to a woman or a minor including a learner or an apprentice, a State license where earning capacity is impaired by age or physical or mental deficiency or by injury, such wage may be less than the minimum fair wage rate and for such period of time as shall be fixed, all to be stated in the license. On its own motion or after conferring with the Commissioner or on petition of 50 or more residents, either while the minimum wage order is directory or mandatory to reconvene the Wage Board or shall appoint a new one for consideration of modification of minimum wage; after notice of 15 days a public hearing. To put into effect such subsequent established wage.

"Wage Board" to be set up by "Commissioner"; the word "Commissioner" meaning the Commissioner of Labor. The Wage Board composed of not more than 3 representatives of employers in an occupation, an equal number of representatives of employees in such occupation, and not more than 3 disinterested persons representing the public. Representatives of employers and employees to be selected so far as practicable from nominations submitted by them.

4. SPECIFIC PROVISION PROVIDING FOR MINIMUM WAGE:

A Fair Wage "shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered.

"It is hereby declared to be against public policy for any employer to employ any woman or minor in an occupation in this State at an oppressive or unreasonable wage .... and any contract, agreement or understanding for or in relation to such employment shall be null and void."

5. CONSTITUTIONAL BASIS:

No case has been found in which the validity of this Act has been determined. The definition of "fair wage", as set forth, distinguishes it from the Act of Congress which was held inviolate in the case of Adkins against Children's Hospital, 261 U.S. 525. In that case the Court pointed out that the minimum wage provided that an Act of Congress did not necessarily have a relation to the capacity of the employee. It was this objection which the Legislature attempted to avoid by defining "fair wage" which was made the minimum wage to women fairly and reasonably commensurate with the value of this service or class of service rendered.

It is possible that this Act could also be distinguished from the Act involved in the Adkins case on the ground that it applies to exceptional or emergency circumstances such as mentioned in that case.

State of New York

I. Public Works (Cahill's Consolidated Saws, 1930, Ch. 32, Sec. 220 as amended 1933, Ch. 731)

A. Extent of occupation and industry covered.

Public works or upon any material to be used. Exempt from provisions of law are:

Stationary firemen in State Hospitals.
Other persons, except mechanics, employed in State Institutions, Engineers, electricians, and elevator men in the division of Public Buildings of the department of public works during sessions of Legislation.
Employees in construction, maintenance and repair of highways and water works outside of limits of cities and villages.

B. Specific reference to Sex.

None

C. Special provisions of Legislation.

Prevailing rate of a day's work in same trade or occupation in the town, city, village, or other civil division of State where work is being done for each laborer, workman or mechanic. Prevailing rate is that paid to majority of laborers, workers or mechanics in same trade or occupation. If no majority, then to greater number. If such greater number is more than 40%. If less than 40% rate is average.

D. Constitutional Basis (to be inserted later)

STATE OF NEW YORK

II. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES:

A. THE LAW: Cahill's Consolidated Laws of New York, 1933 Supplement, Chapter 32, Labor Law, Article 19.

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

"An industry, trade, or business, or branch thereof, or class therein in which women or minors are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm."

2. SEX AND AGE COVERAGE:

Females of 21 years or over and a person of either sex under the age of 21 years.

3. ADMINISTRATIVE BODY IN POWER TO ADMINISTER THE LAW:

The commissioner or director of Labor is given the power and charged with the duty of establishing a Wage Board. The Wage Board is to be composed of not more than three representatives of employers in any occupation, an equal number of representatives of employees in such occupation, and not more than three disinterested persons representing the public. The Wage Board is given the power to investigate and ascertain the wage of women and minors employed in any occupation.

The Act further provides that within sixty days of its organization a wage board shall submit a report including its recommendation as to minimum fair wage standards for the women or minors in the occupation or occupations the wage standards of which the wage board was appointed to investigate.

It is further provided that a report from a wage board shall be submitted to the commissioner who shall within ten days confer with the director and accept or reject such report. If the report is rejected the commissioner shall resubmit the matter to the same wage board or to a new wage board with a statement of the reasons for the resubmission. If the report is accepted it shall be published together with such proposed administrative regulations as the commissioner after conferring with the director may deem appropriate to implement the report of the wage board and to safe-guard the minimum fair wage standards to be established, and notice shall be given of a public hearing to be held by the commissioner or the director not sooner than fifteen nor more than thirty days after such publication at which 11 persons in favor of or opposed to the recommendation contained in such report or in such proposed regulations may be heard.

Within ten days after such hearing the commissioner shall confer with the director and approve or disapprove the report of the wage board. If the report is disapproved the commissioner may resubmit the matter to the same board or to a new wage board. If the report is approved the commissioner shall make a directory order which shall define minimum fair wage rates in the occupation or occupations as recommended in the report of the wage board and which shall include such proposed administrative regulations as the commissioner may deem appropriate to implement the report of the wage board and to safeguard the minimum fair wage standards established.

4. SPECIFIC PROVISION PROVIDING MINIMUM WAGE:

A Fair Wage "shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered.

"It is hereby declared to be against public policy for any employer to employ any women or minor in an occupation in this State at an oppressive or unreasonable wage..., and any contract, agreement or understanding for or in relation to such employment shall be null and void."

5. CONSTITUTIONAL BASIS:

Section 550 sets forth as follows:

"(Factual background) The employment of women and minors in trade and industry in the State of New York at wages unreasonably low and not fairly commensurate with the value of the services rendered is a matter of grave and vital public concern. Many women and minors employed for gain in the State of New York are not as a class upon a level of equality in bargaining with their employers in regard to minimum fair wage standards, and 'freedom of contract' as applied to their relations with their employers is illusory. Since a very large percentage of such workers are obliged from their week to week wages to support themselves and others who are dependent upon them in whole or in part they are, by reason of their necessitous circumstances, forced to accept whatever wages are offered them. Judged by any reasonable standard, wages are in many cases fixed by chance and caprice and the wages accepted are often found to bear no relation to the fair value of the service rendered. Women and minors employed for gain are peculiarly subject to the overreaching of inefficient, harsh or ignorant employers and under unregulated competition where no adequate machinery exists for the effective regulation and maintenance of minimum fair wage standards, the standards such as exist tend to be set by the least conscionable employers. In the absence of any effective minimum fair wage

for women and minors, the constant lowering of wages by unscrupulous employers constitute a serious form of unfair competition against other employers, reduces the purchasing power of the workers and threatens the stability of industry. The evils of oppressive, unreasonable and unfair wages as they affect women and minors employed in the state of New York are such as to render imperative the exercise of the police power of the state for the protection of industry and of the women and minors employed therein and of the public interest of the community at large in their wealth and well-being and in the prevention of the deterioration of the race. In the considered judgment of the legislature this article is constitutional."

In People ex rel. Tipaldo V. Morehead a proceeding by habeas corpus was instituted by the relator to test the validity of this law. The relator was in prison under an indictment which charges in substance that he, as manager of a laundry in Brooklyn, paid adult women employees a lesser sum than the minimum wage fixed for that class of employees by the Industrial Commissioner pursuant to the provisions of the act. He asserts that the statute contravenes the 14th Amendment of the Federal Constitution, and Article 1, Section 6, of the Constitution of the State of New York, in that it operates to deprive him of the liberty and property without the process of law, and also operates to compel him to be a witness against himself in a criminal case.

The Court said "The underlying thought of relator's contention appears to be that the right of freedom of contract emanates from the Fifth Amendment to the United States Constitution, which provides that no person shall be deprived of life, liberty or property without due process of law; and consequently that the minimum wage law here under consideration, is that it deprives an adult woman in full possession of her normal faculties of the right freely to contract with reference to her services, violates the similar inhibition upon States found in the due process clause of the Fourteenth Amendment.

"In support of his contention relator relies principally upon the case of Adkins v. Children's Hospital (261 U.S. 525)."

The Court referring to the Adkins case said:

"It is of special significance that in the Adkins case, with reference to the conception of liberty as involved in the words 'right of contract' the court wrote: 'An interference with this liberty so serious as that now under consideration, and so disturbing of equality

of right, must be deemed to be arbitrary, unless it is supportable as a reasonable exercise of the police power of State.' And again with reference to freedom of contract the court wrote: 'There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints, But freedom of contract is, nevertheless, the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances.....'

"Here is a distinct and unequivocal pronouncement that a reasonable exercise of the police power may work an interference with liberty of contract that is not necessarily to be deemed arbitrary, and that an abridgement of that right may be justified by 'exceptional circumstances'."

"An attempt to exhaustively review the substance of oral and written characterizations of the effect of the world-wide depression would serve no useful purpose. The court may take judicial notice that almost without warning it came upon mankind with an unforeseen and irrestible onrush that bound and fettered the world in its devastating grip. Business collapsed, our conceptions of economic and social securities were shattered, peace of mind was transformed into dread apprehension, contentment into unrest, comfort gave way to hardship and sufficiency to privation. As a result of this universal catastrophe, thousands of women reared to a life of ease, maintained in comfortable surroundings inexperienced with the hardship of proverty, with no occupational training and with no business experience, suddenly found themselves engulfed in the whirlpool of industrial strife, forced there by a calmity of hitherto unknown magnitude, compelled to there engaged in a merciless and to them unfamiliar competition.

"Do the dictates of reason and the common experience of mankind impel the conclusion that under conditions these women are on a parity with men in their ability to distinguish between legitimate and unscrupulous business practices, between the honest and dishonest employer, between fair dealing and chinanery, between 'an oppressive and unreasonable wage' and a fair wage as defined in the Act? The Legislature has answered the inquiry in the negative as evidenced by the last sentence in Section 550, which reads: 'In the considered judgment of the Legislature this article is constitutional.'

"This declaration, unusual in a statute, indicates a legislative familarity with the decisions of the higher courts with reference to legislation of this general character andamounts to a pronouncement that in the Legislature's opinion, the act insofar as it interferes

with liberty of contract, is justified as a reasonable exercise of the police power by the existence of these 'exceptional circumstances'."

The Court on the above reason held the Act valid. It pointed out that the police power was inherently vested in the Legislature, that it was never surrandered by the several States and consequently its free exercise was not necessarily impeded by the 14th Amendment to the Federal Constitution.

STATE OF NORTH DAKOTA

I. MINIMUM WAGE LAWS IN PRIVATE INDUSTRIES

A. THE LAW: Session Laws, 1919, (Ch. 174, pp. 317-322; Supp. to Compile Laws 1913-1925, Sections 396a4, 396b1-396b18.)

1. OCCUPATIONS OR INDUSTRIES COVERED:

Any occupation; occupation to include a business, industry, trade, or branch thereof, except agricultural or domestic service.

2. SEX AND AGE COVERAGE:

Women of eighteen years of age or over and minors of either sex under the age of eighteen years.

3. ADMINISTRATIVE BODY CHARGED WITH ENFORCEMENT:

The Workmen's Compensation Bureau, composed of the Commissioner of Agriculture and Labor, the Insurance Commissioner, and three Workmen's Compensation Commissioners.

4. SPECIFIC PROVISIONS OF THE ACT PROVIDING FOR MINIMUM WAGES:

The said Bureau is authorized and empowered to ascertain and declare the following things:

> "Standards of minimum wages for women in any occupation in the State and what wages are inadequate to supply the necessary cost of living to any such women workers and to maintain them in good health;
>
> "Standard of minimum wages for minors in any occupation within the State of North Dakota and what wages are unreasonably low for any such minor workers."

Note: The Bureau is empowered to grant to women physically defective by age or otherwise, or to an apprentice or learner in such occupations in which a minimum wage has been established, a special license authorizing the employment of such persons at a wage less than the minimum wage.

5. CONSTITUTIONAL BASIS:

No reported case has been found in which the validity of this Act was determined in North-western Telephone Exchange Company v. Workmen's Compensation Bureau and Steam Laundry Company v. Workmen's Compensation Bureau (Sup. Ct. N.D. 1921), 182 N.W. 269.

These cases were presented to this Court on appeal from an order in each granting a temporary restraining order. The

complaints did not challenge the validity of the Workmen's Compensation Act, which is chapter 174, Session Laws of 1919. They challenged the validity, regularity, and reasonableness of certain orders and proceedings of the Minimum Wage Department of the Compensation Bureau, and charge that such orders, or some of them, are violative of the Fourteenth Amendment to the Federal Constitution.

In the lower Court the plaintiffs applied for temporary restraining orders. The restraining orders were granted. The plaintiffs were ordered to execute bonds which the trial Court thought sufficient for the protection of employees interested or which might become interested. Precaution was also taken to provide for additional bonds in case necessity should require. It appears that the plaintiffs did execute these bonds.

This Court in affirming the rulings of the lower Court said:

> "The only real question presented in this appeal is: Did the lower Court abuse its discretion in continuing in force the temporary restraining orders, until the final disposition of the cases upon their merits in the trial Court? This question, in all the circumstances of these cases, we are certain, must be answered in the negative."

Apparently, the validity of the Act was sustained in the lower Court on the ground that it was a legitimate legislative exercise of the police power. However, since the decision of Adkins v. Children's Hospital, 261 U.S. 525; Murphy v. Sardell, 269 U.S. 530; and Donham et al. v. West-Nelson Manufacturing Company, 273 U.S. 657, so much of this Act as relates to minimum wages for women would not be held to come within the protection of the State Police Department, on the ground that the relation of wages to the health and morals of women is too remote.

STATE OF OHIO

I. Public Works (Acts 1131, Section 17-3 to 17-6 of Code of 1932)

A. Extent of occupation and industry covered.

Contracts for construction of public improvements. Meaning any construction, reconstruction, improvement, enlargement, or repair of any public improvement. Public improvement meaning all buildings, roads, streets, alleys, sewers, ditches, sewer disposal plants, water works, and all other structures or works constructed by the State of Ohio or any political sub-division.

B. Specific statutory reference to sex.

None.

C. Special provisions of legislation.

"Locality" means the county wherein the physical work is being done.

Public authority authorized to contract for public improvement may, before advertising for bids, fix the fair rate of wages to employees in various branches or classes of work which shall be not less than the prevailing rate in the locality wherein physical work is performed.

D. Constitutional Basis (to be inserted later)

STATE OF OHIO

I. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES:

A. THE LAW: Session laws 1933, pp. 502-510.

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

An Industry, trade, or business, or branch thereof, or class therein in which women and minors are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm.

2. SEX AND AGE COVERAGE:

All females 21 years of age and over, and minors of either sex under 21 years of age.

3. ADMINISTRATIVE BODY IN POWER TO ADMINISTER THE LAW:

"Wage Board" to be set up by "superintendent": the word "superintendent" meaning the superintendent or any deputy or assistant superintendent of the minimum wage division as a separate department of industrial relations. The Wage Board composed of not more than 3 representatives of employers in any occupation, an equal number of representatives of employees in such occupation, and not more than 3 disinterested persons representing the public.

The Board is given the power and duty to investigate and ascertain the wages of women and minors employed in any occupation. To differentiate and classify employment according to the nature of the service rendered and recommend minimum fair wage varying with locality. To recommend a suitable scale of rates for learners and apprentices which may be less than the regular fair wage rate. To issue to a woman or a minor including a learner or an apprentice, a state license where earning capacity is impaired by age or physical or mental deficiency or by injury, such wage may be less than the minimum fair wage rate and for such period of time as shall be fixed, all to be stated in the licenses. On its own motion or after conferring with superintendent or on petition of 50 or more residents, either while the minimum wage order is directory or mandatory to reconvene the Wage Board or shall appoint a new one for consideration of modification of minimum wage; after notice of 15 days a public hearing. To put into effect such subsequent established wage.

4. SPECIFIC PROVISION PROVIDING FOR MINIMUM WAGE:

A Fair Wage "shall mean a wage fairly and reasonably commensurate with the value of the service or class of

service rendered.
"It is hereby declared to be against public policy for any employer to employ any woman or minor in an occupation in this State at an oppressive or unreasonable wage ..., and any contract, agreement or understanding for or in relation to such employment shall be null and void."

5. CONSTITUTIONAL BASIS:

No case has been found in which the validity of this Act has been determined. The definition of "fair wage", as set forth, distinguishes it from the Act of Congress which was held inviolate in the case of Adkins against Children's Hospital, 261 U. S. 525. In that case the Court pointed out that the minimum wage provided that an Act of Congress did not necessarily have a relation to the capacity of the employee. It was this objection which the Legislature attempted to avoid by defining "fair wage" which was made the minimum wage to women fairly and reasonably commensurate with the value of this service or class of service rendered.

It is possible that this Act could also be distinguished from the Act involved in the Adkins case on the ground that it applies to exceptional or emergency circumstances such as mentioned in that case.

STATE OF OREGON

I. Public Works (Acts 1933, Ch. 357.

A. Extent of occupation and industry covered.

Note:- Act relates to creation of State Power Commission.
"All labor employed by the Commission, directly or indirectly."

B. Specific reference to sex.
None.

C. Special provisions of legislation.

"The minimum scale of wages to be paid by the Commission and/or by any contractor or sub-contractor for the Commission shall be not less than the prevailing wage for the kind of work in the same trade in the locality where the work is being done; provided that where no prevailing wage exists in said locality, then the prevailing wage shall be that of the nearest locality where such prevailing wage has been established for that kind of work. This minimum scale shall be fixed by the Commission prior to the notice and call for bids on work to be contracted."

D. Constitutional Basis (to be inserted later)

STATE OF OREGON

II. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES:

A. THE LAW: Session Laws of 1913, Chapter 62, Pages 92-99.

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

Any occupation in which women or minors are employed. Occupation includes any and every vocation, pursuit, trade and industry.

2. SEX AND AGE COVERAGE:

Women of 18 years of age or over and minors of either sex under the age of 18 years.

3. ADMINISTRATIVE BODY CHARGED WITH ENFORCEMENT:

The National Welfare Commission, composed of 3 members appointed by the Governor. The Commission is given the duty and power:

1. Full power and authority to investigate and ascertain the wages of women and minors in the different occupations in which they are employed.

2. To ascertain and declare, in the manner provided, the standards of minimum wages for women in any occupation and what wages are inadequate to supply the necessary cost of living to any women in any occupation to maintain them in good health, and to ascertain and determine the standards of minimum wages for minors in any occupation and what wages for such minors are unreasonably low.

4. SPECIFIC PROVISION OF THE STATUTE WHICH PROVIDES FOR MINIMUM WAGES:

Note: The Commission is empowered to grant to women physically defective or crippled by age, or otherwise, a special license authorizing their employment in any occupation in which only a minimum time-rate wage has been established at a wage less than such minimum time-rate.

The Conference is authorized when it appears proper to recommend suitable minimum wages for learners or apprentices, and the maximum length of time that any woman worker may be kept at such wage below the minimum, as a learner or an apprentice.

"It shall be unlawful to employ women or minors in any occupation * * * for wages which are inadequate to supply the necessary cost of living and to maintain them in health; and it shall be unlawful to employ minors in any occupation * * * for unreasonably low wages."

5. CONSTITUTIONAL BASIS:

In Stettler V O'Hara et al Industrial Welfare Commission (Supreme Court of Oregon, 1914) 139 P.743 an action was brought to vacate and annul an order of the Industrial Welfare Commission of the State of Oregon and enjoin its enforcement from a decree for defendants plaintiff appealed. Affirmed.

It was shown that after proceeding in accordance with the act the commission made an order which provided that no person owning or operating any manufacturing establishment in the City of Portland should employ any woman in that establishment for more than nine hours a day or employ any experienced adult woman worker at a weekly wage of less than $8.64, any lesser amount was declared to be inadequate to supply the necessary cost of living to such woman factory worker and maintain her in health. A demurrer was made to the complaint. This raised the issue whether or not the complaint stated facts which showed that the acts complained of were within the reasonable exercise of the police power of the State.

The purpose of this suit was to have determined whether the act was in violation of either the Fourteenth Amendment of the Federal Constitution or Section 20, Article 1 of the Oregon Constitution. The Court said there had been some utterances by the Court of last report that it is such an inhibition.

The Court in reviewing some of the grounds upon which the maximum 10-hour laws for women had been upheld pointed out that it was ceded by all students that woman's physical structure and her position in the economy of the race renders her incapable of competing with man either in strength or endurance. The Court after reviewing the case of Muller V Oregon 208 U.S. 412 and other cases said:

"These are some of the grounds upon which maximum ten-hour laws are sustained, and we have cited them here as applying with equal force to sustain the women's minimum wage law, and as bringing it within the police power of the Legislature. The State should be as zealous of the morals of its citizens as of their health. The 'whereas clause' quoted above is a statement of the facts or conclusions constituting the necessity for the enactment, and the act proceeds to make provision to remedy these causes, 'Common belief' and 'common knowledge are sufficient to make it palpable and beyond doubt that the employment of female labor as it has been conducted is highly detrimental to public morals, and has a strong tendency to corrupt them. Elizabeth Beardsley Butler, in her 'Women of the Trades', says: 'Yet the fact remains that, for the vast bulk of sales girls, the wages paid are not sufficient for self-support, and, where girls do not have families to fall back on, some go undernourished, some sell themselves. And the store employment which offers them this two-horned dilemma is replete with opportunities which in gradual, easy, attractive ways beckon to the second choice; a situation which a few employers not only seem to tolerate, but to encourage,' * * * Every argument put forward to sustain the maximum hours law, or upon which it was established, applies equally in favor of the constitutionality of the minimum wage law as also within the police power of the state and as a regulation tending to guard the public morals and the public health. * * * "

This case was affirmed by a divided court in Stettler v. O'Hara, 243 U. S. 269.

STATE OF PENNSYLVANIA

I. Public Works: (Act 1931 - Act No. 144 - Amends Code 1929)

A. Extent of occupation and industry covered.

Contracts by Commonwealth for contruction, alteration, or repair if any public work.

B. Specific reference to sex.

None

C. Special provisions of legislation.

Such wages as shall be the established and current rate of wages paid by employers or organized labor in doing similar work.

D. Constitutional Basis (to be inserted later)

Puerto Rico

I. Public Works (Act 1923, Sec. 1, as amended 1925)

A. Extent of occupation and industry covered.

All public works.

B. Specific statutory reference to sex.

None.

C. Special provisions of legislation,

laborers, workmen or mechanics shall receive not less than $1.00 for each legal day's work performed.

D. Constitutional Basis (to be inserted later)

STATE OF SOUTH DAKOTA

I. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES

A. THE LAW: Secretary of Agriculture. Compiled laws, 1929, sec. 1022-A-1022-E; session laws, 1951, chs. 173, 174.

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

Occupations in any factory, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant, or packing house in which women or girls over 14 years of age are employed.

2. SEX AND AGE COVERAGE:

Females over 14 years of age.

3. ADMINISTRATIVE BODY IN POWER TO ADMINISTER THE LAW:

The Secretary of Agriculture.

4. SPECIFIC PROVISION PROVIDING FOR MINIMUM WAGE:

"No woman or girl over the age of 14 years shall be employed or permitted to work in any factory, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant, or packing house, at less than a living wage of $12.00 per week, or a proportionate amount for periods of employment of less than a week."

It also provided that any woman or girl over 14 years of age who receives less than minimum wages shall be entitled to recover in civil action full amount and costs notwithstanding any agreement.

5. CONSTITUTIONAL BASIS:

No case has been found in which the validity of this Act has been determined. The definition of "fair wage," as set forth, distinguishes it from the Act of Congress which was held invoilate in the case of Adkins against Children's Hospital, 261 U.S. 525. In that case the Court pointed out that the minimum wage provided that an Act of Congress did not necessarily have a relation to the capacity of the employee. It was this objection which the Legislature attempted to avoid by defining "fair wage" which was made the minimum wage to women fairly and reasonably commensurate with the value of this service or class of service rendered.

It is possible that this Act could also be distinguished from the Act involved in the Adkins case on the ground that it applies to exceptional or emergency circumstances such as mentioned in that case.

STATE OF TEXAS

I. Public Works (Act 1931, ch. 46; Act 1933, ch.45)

A. Extent of Occupation and Industry covered.

State Highways. (Act 1931)
All work for State, county, city, town, district or sub-division. (Act 1933)

B. Specific statutory reference to Sex.

None. (Act. 1931)
None. (Act. 1933)

C. Special Provisions of Legislation.

(Act 1931) All persons employed for manual labor on highways not less than 30¢ per hour.

(Act 1933) "Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing per diem wages for legal holidays and overtime work, shall be paid to all laborers, workmen and mechanics employed by or on behalf of the State of Texas, or by or on behalf of any county, city and county, city, town, district, or other political sub-division of state engaged in the construction of public works, exclusive of maintenance work. Laborers, workmen and mechanics employed by contractors or sub-contractors in the execution of any contract for public works with the State or any officer or public body thereof, or with any county, city, and county, and county, city, town, district, or any sub-division or officer thereof.

D. Constitutional Basis

STATE OF UTAH

I. Public Works (Acts 1933, ch. 39, sec. 1)

A. Extent of occupation and industry covered.

All laborers, workmen, and mechanics employed by or on behalf of the State of Utah or county, city and county, city, town, district or other political sub-division thereof, engaged in Public Works exclusive of maintenance.

B. Specific Statutory reference to sex.

None.

C. Special provisions of Legislation.

"Not less than the general prevailing rate of wages per hour for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of wages per hour for legal holidays and overtime".

D. Constitutional Basis

STATE OF UTAH

II. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES:

A. THE LAW: Session laws 1933, ch. 58.

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

The various occupations, trades and industries in which women and minors are employed.

2. SEX AND AGE COVERAGE:

Women and minors of either sex under 21 years of age.

3. ADMINISTRATIVE BODY IN POWER TO ADMINISTER THE LAW:

The Industrial Commission and a Wage Board consisting of an equal number of representatives of employers and employees in the occupation, trade or industry in question and a representative of the Commission.

4. SPECIFIC PROVISION PROVIDING FOR MINIMUM WAGE.

After a public hearing, on its own motion or upon a petition the Wage Board is given power to fix a minimum wage to be paid women and minors engaged in any occupation, trade or industry in the State, which shall be not less than a wage adequate to supply such women and minors the necessary cost of proper living and to maintain the health and welfare of such women and minors.

Any employee receiving less than the legal minimum wage shall be entitled to recover in civil action full amount and costs for the unpaid balance.

5. CONSTITUTIONAL BASIS:

No case has been found in which the validity of this law was determined. No constitutional basis is stated in the Act but the same is an attempt to exercise the State police power.

STATE OF WASHINGTON

I. Public Works (Act 1931, Sec. 8)

A. Extent of occupation and industry covered.

Any work for public utility district of local utility district within any public utility district.

B. Specific statutory reference to sex.

None.

C. Special provisions of legislation.

"Every contractor and sub-contractor performing any work for public utility district or local utility district within said public utility district shall pay or cause to be paid to its employees on such work or under such contract or sub-contract not less than minimum scale fixed by the resolution of the commission prior to the notice and call for bids."

D. Constitutional Basis (to be inserted later)

STATE OF WASHINGTON

I. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES:

A. THE LAW: Session Laws of 1913, Chapter 174, Pages 603-608.

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

Occupations, trades, and industries, in which women and minors are employed.

2. SEX AND AGE COVERAGE:

Women of 18 years of age or over and minors of either sex under the age of 18 years.

3. ADMINISTRATIVE BODY CHARGED WITH ENFORCEMENT:

The Industrial Welfare Commission composed of 5 members. The Commission is given the duty and power:

1. To ascertain the wages of women and minors in the various occupations, trades, or industries, in which they are employed.

2. To establish such standards of wages for women and minors as shall be held to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women.

Note: The Commission is empowered to grant to a woman physically defective or crippled by age or otherwise, or to an apprentice in an occupation which usually requires to be learned by an apprentice, a special license authorizing their employment at a wage less than the minimum rate set for such occupation. The wage of such license is to be fixed by the Commission and the duration of time for which such wage shall be paid shall be decided by it.

4. SPECIFIC PROVISION OF THE STATUTE WHICH PROVIDES FOR MINIMUM WAGES:

"Section 2.* * * and it shall be unlawful to employ women workers in

any industry within the State of Washington at wages which are not adequate for their maintenance.".

5. CONSTITUTIONAL BASIS:

The following cases have been determined under the Act providing for minimum wages: Larsen V Rice (Sup. Ct. Wash. 1918) 171 Pac. 1037. In 1 13 the legislature passed an act relating to the employment of women and minors and making it unlawful to employ women in any industry at wages inadequate for their maintenance. The act also provides for the creation of a commission which shall have power to fix reasonable standards of wages which shall be sufficient for the decent maintenance of women. The act empowers the Commission through an advisory conference to investigate conditions of labor in any occupation in which women were employed together with wages paid and to establish by an obligatory order a minimum wage to be paid for such labor. Acting under the statute, the Commission appointed in pursuance thereof, after investigation in the manner provided entered an obligatory order fixing $10.00 per week as the minimum salary for women in office employment. Subsequent to the time when this order became effective the appellant engaged the respondent in office employment at a salary of about $3.00 a week. This action was brought by respondent to recover the difference between the wage rate paid and the sum she conceived herself entitled to under the statute and order. In the answer the appellant set up an affirmative defense which raised the question of the constitutionality of the act. A demurrer was sustained to this defense.

This court in sustaining the ruling of the lower court said:

"The first question is the constitutionality of the act. On this question we do not feel disposed to enter into an extended discussion. The State of Oregon has a law upon its statute books almost the exact counterpart of our own, and its constitutionality was sustained by the unanimous decision of the highest court of that state sitting en banc, against attacks based upon the several grounds urged by the appellants

here. Stettler V. O'Hara, 69 Or. 519, 139 Pac. 743, I.R.A. 1917C, 944, Ann. Cas. 1916A, 217; Simpson V O'Hara, 70 Or. 261, 141 Pac. 158. These cases were taken, by writ of error on the federal question involved, to the United States Supreme Court, and there were affirmed, after a reargument, although by an equally divided court, Mr. Justice Brandeis taking no part in the consideration and decision of the cases. Stettler V O'Hara and Simpson V O'Hara 243 U.S. 629, 37 Sup, Ct. 475, 61 L. Ed. 937. The reasoning of the justices of the Oregon court in writing the decisions in the cases appeals to us as sound and conclusive, and we are content to rest our judgment on the authority of the cases as there determined."

Spokane Hotel Company V Younger et al (Sup. Ct. Wash. 1930) 194 Pac. 595. This was an appeal from an order of the lower court dismissing an action to restrain the enforcement of an order of the Industrial Welfare Commission by which all employers of females, over 18 years of age, in the housekeeping industry were required to pay a minimum wage of $18.00 per week. The appellants argue that the statute (Chapter 174 of the Session Laws of Washington 1913) under which the Commission acted is unconstitutional. They do not attack the act on the ground that it is not within the police power, but they contend that it is void because it makes no provision for notice to persons affected by the act and for that reason void. The court in affirming the decision of the lower court said:

"In short, the legislature, instead of fixing the minimum wage and the conditions of labor for women and minors as it would clearly have the right to without any notice whatever to persons affected thereby, has authorized a commission to examine into and determine the facts upon which the act may become operative. This, we are satisfied, may be done without any notice, unless notice is required by the act

governing the commission. We are of the opinion that employers have no vested right to employ women or minors, and therefore are not entitled to notice as a matter of right. The legislature in the exercise of its police power may take away whatever rights the employer has in that respect.

Sparks V Moritz (Sup. Ct. of Wash. 1926) 251 Pac. 583. This was an appeal on the findings of fact, conclusions of law, and judgement, and without any appearance or argument on behalf of respondent. The action was by an adult women for the balance of compensation which she claimed for the operation of an elevator during part-time employment. Computed on a basis of a 48-hour week and a minimum weekly wage fixed by statute there was due an unpaid balance of $171.65. The answer and cross-complaint set forth that under the agreement respondent was privileged to devote a part of her time to her personal duties and that she did absent herself from the elevator during the alleged hours of employment about four-fifths of that time.

Appellant contended that the minimum wage statute was in violation of section 3, Article I and section 12, Article I, of the state constitution and in violation of the Fifth and Fourteenth Amendments to the Federal Constitution in that the minimum wage law violates the guaranty of liberty of contract and of equal protection under the law. This court in its opinion said:

"Among other things, as conclusions of law, the trial court concluded that chapter 174, laws of 1913, is unconstitutional and invalid, under the decision of the Supreme Court of the United States in Adkins et al V Children's Hospital of the District of Columbia, 261 U. S. 525, 43 S. Ct. 394, 67 L. Ed. 785, 24 A. L. R. 1238, insofar as respondent is concerned, but that, nevertheless, it was the duty of the trial court to follow the decision of this court in the case of Larsen V Rice, 100 Wash. 642, 171 P. 1037, wherein it was held that the statute

above mentioned is constitutional and valid.

"Regardless of the decision of the United States Supreme Court in the Adkins Case, supra, which probably has the effect of overruling this court in Larsen V Rice, supra, respondent was not entitled to recover for another reason. Her employment was not such employment as came within the provisions of the minimum wage law, and order. Neither the law nor the order of the industrial welfare committee required the payment of the weekly minimum when the employee does not devote her time to the earning of a living wage, but in connection with another calling, or with no calling, works a few hours per day, or a few hours per week, or renders intermittent service. The statute does not apply to such a situation. Miller Telephone Co.V. Minimum Wage Commission (1920) 145 Minn. 262, 177 N. W. 341."

The law was recently held invalid in the following order:

"COURT OF THE STATE OF WASHINGTON IN AND FOR CHELAN COUNTY

ERNEST PARRICH AND ELSIE PARRISH, his wife

Plaintiffs,

vs

No. 12215

WEST COAST HOTEL COMPANY, A Corporation.

JUDGEMENT AND DECREE

Defendants.

. . . . . .

IT IS HERE AND NOW CONSIDERED AND ORDERED that the minimum wage act, Chapter 174, Laws of 1913, and the Acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of the Constitutional rights of this department guaranteed it under Amendment 5, and Section 1, of Amendment 14 of the Constitution of the United States.

Done in open Court this 9th day of November, 1935.

W. O. Parr, Judge."

STATE OF WISCONSIN

I. Public Works (Act 1931, Chap. 269; Act 1931, Chap. 432; Act 1931, Chap. 441).

A. Extent of occupation and industry covered.

Contracts for:
(Chapter 269) construction, remodeling Public Building
(Chapter 432) Highway.
(Chapter 441) Commissioners of Metropolitan Sewerage Commission.

B. Specific Statutory reference to Sex.

None.

C. Special provisions of Legislation.

(Chapter 269) - Each contract etc. etc. no laborer, workman or mechanic shall be paid less than the prevailing wage rate in the same or most similar trade or occupation in the county wherein such public building is situated. Prevailing wage rate in any trade or occupation shall be the rate paid to a majority of all persons employed in such trade or occupation in such county, or if no rate, then the rate paid to the largest number in the county for work in such trade or occupation.

(Chapter 432) - "No laborer or employee ... shall not be paid less rate of wages than the prevailing rate of wages in the county where the work is to be done, as set forth in the contract.

The Industrial Commission shall annually determine the prevailing wage rate for common labor and for such other classes as the highway commission may deem advisable.

(Chapter 441) - The commissioners of the Metropolitan Sewerage Commission shall establish a minimum wage scale not less than the prevailing wage paid to similar employees of the county and municipalities.

D. Constitutional Basis (to be inserted later)

STATE OF WISCONSIN

1. MINIMUM WAGE LAW FOR PRIVATE INDUSTRIES:

A. THE LAW: Statutes 1931, Sections 20.57, 101.02, 104.01-104.12.

1. OCCUPATIONAL AND INDUSTRIAL COVERAGE:

Any occupation wherein there is compensation for labor measured by time, piece or otherwise.

Every wage paid or agreed to be paid by any employer to any female or minor empolyee.

2. SEX AND COVERAGE:

All females and minors.

3. ADMINISTRATIVE BODY CHARGED WITH ENFORCEMENT:

The Industrial Commission. (Commission is composed of 3 members appointed by the Governor with the advice and consent of the Senate.) The Commission is empowered to investigate, ascertain, determine and fix reasonable classifications and determine living wages. The Commission may also make rules and regulations whereby any female or minor unable to earn a living wage determined upon shall be granted a license to work for a wage which shall be commensurate with his or her ability.

4. SPECIFIC PROVISION PROVIDING MINIMUM WAGE:

Every wage shall be not less than a living wage.

5. CONSTITUTIONAL BASIS:

The original Act was passed in 1913. It was amended in 1931. No case has been found in which the validity of the amendment was judicially determined. The validity of the original Act was determined in the following case in 1933;

Folding Funiture Works V. Industrial Commission of Wisconsin (D. Ct. W.D.Wis., 1923) 300 Fed. 991. The hearing in this case was before three judges and their decision was in a percurim opinion. It was set forth that plaintiff was doing business in Wisconsin and within the scope and operation of the Wisconsin Minimum Wage Law (St. Wis. 1923, c. 104). The Constitutionality of this act was attacked on the ground that it determined and fixed the minimum wages for adult women. It was also set forth that a minimum wage of 25 cents per hour had been fixed by defendant and that he was able to employ

STATE OF WISCONSIN (Cont'd)

adult women for less than that amount but to do so it would be subjected to repeated criminal prosecution.

The court held that the constitutionality of the Act rested entirely upon the application of the decision in Adkins V. Children's Hospital, 261 U.S. 525. The court could not find any vital or substantial difference between the cases. On this basis an injunction order against the defendants so far as the stature affected adult women was issued.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION
THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the code, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Materials Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, these materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Construction Industry and NRA Construction Codes, the
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Income, A study of,
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Statistical Background of NRA
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
9675.

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: A Study of Trade Practice Provisions in Selected NRA Codes
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control Under NRA Codes, Some Aspects of,
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparison with Trade Practice Provisions of NRA Codes.

Labor Studies

Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-1935
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
  Part A. Introduction
  Part B. Control of Hours and Reemployment
  Part C. Control of Wages
  Part D. Control of Other Conditions of Employment
  Part E. Section 7(a) of the Recovery Act
PRA Census of Employment, June, October,1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approved Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their Part in the Administration of the NIRA
  Part A. Introduction
  Part B. Nature, Composition and Organization of Code Authorities
  Part C. Activities of the Code Authorities
  Part D. Code Authority Finances
  Part C. Summary and Evaluation
9675.

Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
  Part A. Executive and Administrative Orders
  Part B. Labor Provisions in the Codes
  Part C. Trade Practice Provisions in the Codes
  Part D. Administrative Provisions in the Codes
  Part E. Agreements under Sections 4(a) and 7(b)
  Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review and Evaluation of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with other Federal Agencies
Relationship of NRA with States and Muncipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce Provisions of
ommerce Clause, Possible Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Rogulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Econ mic Standards, Legal Memorandum on Possibility of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
rade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?
9675.

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of these studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. Industry and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
General Contractors Industry
Graphic Arts Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9675.

Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
9675.

Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry